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# FEDERAL POLITY

BY

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WITH

A FOREWORD

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## FOREWORD

Mr. Brij Mohan Sharma's monograph on "FEDERAL POLITY" is essentially the work of a scholar and thinker, but at the present juncture it will be found interesting as well as useful by the scholar and publicist alike. It does not seek to elucidate any particular theories or theses but to marshal the salient features of "federalism in action" in the several existing constitutions usually classed as federal. In doing so Mr. Sharma has displayed both skill and judgment and the wealth of quotations he has cited throughout this book has not burdened or complicated his main purpose in writing this book. The author has done well in separating the study of the political concepts involved in federalism from that of the political history of federal states and constitutions and in examining again separately the growth of federalism in relation to the specific functions of states and constitutions and their structural and organic evolution. It has enabled him to present comparative criticism in respect of the actual machinery and functions as distinct from the general principles or theory on which they are based in different countries. Above all, he has avoided the easy temptation of offering opinions or judgments in the shape of criticisms, and his own observations are more or less suggestive, if not tentative. This exhibits, in my view, the correct attitude of mind that should animate the

student of political research in this country and I can only hope that the stimulating example of the Lucknow University, of which the work of Mr. Sharma is one of the first fruits, will be followed up by other Universities, where constructive efforts of a similar character may be more largely encouraged.

MADRAS :  
*August 10, 1931.* }

A. RANGASWAMI IYENGAR

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TO MY KIND TUTOR

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## PREFATORY NOTE

At a time when the future constitution of India is in the melting pot and it is taking a federal turn, the author believes that a careful examination of federal systems that have existed in the past or that exist at present will be found to be valuable. No such detailed study, historical, descriptive, and critical which is at the same time up to date is known to the writer. Hence this attempt. If it proves helpful in solving some of the important problems being discussed to-day in our country, the author's efforts would be amply rewarded.

# CHAPTER I

## SCOPE AND METHOD OF FEDERALISM.

### INTRODUCTORY.

Among contemporary forms of polity the federal type is undoubtedly one of the most important. The United States of America, Switzerland, Canada, Australia, South Africa, and Germany are, at present, all federations. Modern scientific discoveries and the consequential modifications in economic and social relationship have been necessitating larger and larger political combinations. And federalism is the result of an attempt to secure this end, at the same time retaining in the hands of these combining political units as large an amount of freedom as possible. Nor has the movement come to an end. Inside the British Empire the recent federal movement has apparently failed. But in the current discussions regarding the future of the Indian constitution there are many strong advocates of the federal solution. And in the international field the League of Nations can undoubtedly be looked upon as an incipient federation. Whatever may be its actual future, it cannot be denied that an influential body of world opinion to-day looks forward to the development of the League's institutions along federal lines.

But federalism connotes a high degree of political experience for its successful establishment and working. This is one of the reasons why prior to the foundation of the

constitution of the United States of America in 1789, such cases of political combinations as may be called federal were really exceptions, and even these could be called federal only in a rather loose sense of the word. "Though federal governments are ancient—the oldest apparently is that formed by the cities of Lycia in the fourth century B.C.—the ancient federations scarcely got beyond the form of leagues of small republics for the purpose of common military glory."\* This statement of Bryce depicts the character of ancient federations.

A recent writer has attempted to prove the existence of federal institutions in ancient India. He says: "The state in ancient India was not unitary in the strict sense of the term. It was saturated through and through with the principles of what for convenience may be called federalism and feudalism. It must, of course, be emphasized that modern notions of federalism—written constitutions, clear demarcation of spheres of power, the idea of federal and state authorities—were unknown to India."† He supports his hypothesis by citing instances of Murundrāja, Chandragupta, the Mauryan Empire, Sindh, and the Muslim rule, as types of feudal-federations.‡ Assuming that the character of the ancient Indian State was not strictly unitary, it is difficult to comprehend how in the absence of the three essentials of federalism, as described by the writer himself, it could be called federal except in an unscientific sense of the word. These were, almost all, cases of Empire states created as a result of one state bringing others under its subjection and granting them a kind of local autonomy from the sheer necessity of the situation.

\* James Bryce. 'Constitutions,' p. 271.

† Beni Prasad. 'The State in Ancient India,' p. 504. Such a mistaken view results from one's over-enthusiasm to trace the existence of all modern conceptions to ancient times but in this task one is never on sure grounds.

‡ Ibid. pp. 233, 346, 395, 436, 487—489, 501 and 502.

The only cases of ancient federations of which we have accurate and definite information are those of Greece. § Even they, when we compare their institutions with those of a modern federal state will be found to be of a primitive character.

#### (A) TYPES OF POLITICAL UNIONS.

Political combinations of various groups and communities, on more or less an equal footing, need not always be of the same character or extent. In fact, there are divers types of them, according to differing circumstances. History affords examples of several kinds of these unions. When George I ascended the throne of England in 1714 he retained under him his ancestral possession of Hanover. This was only a personal union which lasted upto 1837 without, in any way, affecting the position of England. During this period England and Hanover had the same person as the head of the state, but the independence of each remained unimpaired and the two states retained their distinct characters in all international dealings. Nor was there any obligation for them to act in concert in their dealings with any foreign power. In short, the separate existence of the two states as it had been prior to 1714 was not in any wise changed because of their personal union.

Another kind of union was that of England and Scotland between the years 1603-1707. In the year 1603 King James VI of Scotland became King of England also and by this act he united the two Kingdoms. Both the states retained their own laws and institutions and their

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§ "There are, however, examples in Greece proper and one, Lycia in Asia Minor, of real federal unions. The chief Greek federations were those of Thessally, Boeotia, Aearnania, Olynthus, Arcadia, Aetolia, Achaen. the most important as well as the most complete in respect of organization being the Aetolian League and the Achaean League."

internal political systems were not in any way impaired by the Union. Only in their external dealings they became one and in all international affairs they appeared as one state under the same Sovereign. This sort of union lasted upto the year 1707 when by the Act of Union\* the two states merged their internal sovereignty and for all purposes they became one state. Article III of the Act of Union stipulated "That the United Kingdom of Great Britain be represented by one and the same Parliament to be styled 'The Parliament of Great Britain'. Articles V-IX established uniformity of Excise, Salt duties, and Land Tax. Articles XVI-XVII provided for the same standard of Coinage, and Weights and Measures. There was also provision for keeping one seal for the two erstwhile in use. In order to make the union perfect Article XXV provided "That all Laws and Statutes in either Kingdom so far as they are contrary and inconsistent with the Terms of these Articles, or any of them, shall, from and after the Union cease and become void and shall be so declared to be by the respective Parliaments of the said Kingdoms". So the two Parliaments so far sovereign in their respective Kingdoms themselves resigned their sovereignty into the hands of a new one established to legislate for the United Kingdom. Thus England and Scotland thenceforward ceased to be regarded as two distinct Kingdoms even in their internal administrations. This was a case of real Union and the result was the voluntary establishment of a unitary state.

A third type of union between two or more states usually grows out of a temporary alliance, concluded for specific purposes, political or economic. The result is a confederation. This is intended to be a permanent arrangement and common institutions are established for the carrying

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\* Act For the Union of the two Kingdoms of England and Scotland. 6th March, 1706-1707, 6 Anne, cap. 11.

(Statutes of the Realm, Vol. viii, pp. 536-577).

out of the purposes of the Union. These institutions are usually very few in number, and generally the decisions of these common bodies have only a recommendatory as opposed to a mandatory force. The typical cases are of the American Confederation (1781-1789), the Swiss Confederation (upto 1874), and the German Confederation (upto 1874).

Lastly there is the federal union in which the federating states definitely lose their erstwhile independent character, and while retaining some powers in their separate capacities for internal administration they become one state for the purpose of exercising all the other powers of government, and with this object in view they create above themselves a new supreme power in the form of the federal Government.

Thus all unions or political combinations apart from those of a mixed type like the Austro-Hungarian Monarchy fall within the four kinds enumerated above; namely (i) personal unions, (ii) real unions, (iii) leagues or confederacies, or (iv) federations. The first three kinds of unions differ from federations in this important respect that in (i) and (ii) the uniting states retain their independent characters but unite for a few advantages, and in (iii) they lose their separate characters even in their internal autonomy and become a unitary state, while in the case of federations the federating states lose their sovereign character but retain their internal independence, setting up above themselves a new supreme authority which becomes the real Government of the federated country. These federations form the subject of the present discussions and investigation.

#### (B) FEDERALISM DEFINED.

When two or more states combine to establish a new state retaining at the same time a place and status for themselves inside the new organisation, they are said to form a federation. It may sometimes happen that a state is



split up into two or more units with the definite object of forming a federal union among them. This actually happened in the case of Canada: in the year 1867 when the Union of Canada was split into two provinces (the province of Quebec and the province of Ontario) and the British North America Act was passed establishing a federal government in that Colony.\* And the process has got to be the same if it is decided to establish a federation in British India. So that the tendency that creates or may create a federation is not only aggregative but also disruptive in its nature according as the centripetal or centrifugal forces are stronger.

Federation is, therefore, the creation of a sacred contract to which the federating states are parties. By entering into this contract the parties definitely lose a part of their independence, but in return they get the benefits which attend such a combination. Thus "the name of Federal Government may, in this wider sense, be applied to any union of component members, where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of merely municipal freedom."†

It should, however, be mentioned that under a federal form of Government the central, the more properly speaking the national, Government co-exists with the various Governments of the states that compose the federation.

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\*The following words in the Resolution passed by South African Cape House of Assembly are interesting in this connection. "And as it may be expedient that the Colony should be divided into three or more Provincial Governments for the management of their domestic affairs, formed into a Federative Union under a general Government for the management of affairs affecting the interest and relations of the United Colony...." Resolution appointing a Commission of Inquiry, passed on 9 June, 1871. Newton. 'The Unification of South Africa,' Vol. I, p. 12.

† Freeman, 'History of Federal Governments,' Vol. I, p. 3.

Federalism therefore presumes loss of a part of sovereignty by the State Governments individually. For if the individual states do not lose their sovereign character there can be no true federation. It can only be a confederacy. The state Governments are given or they retain certain spheres of administration definitely stated in the constitution. So that as Prof. Dicey has remarked, "Federalism means the distribution of the force of the state among a number of co-ordinate bodies each originating in and controlled by the constitution."\* And similarly the federal Government, in its turn, exercises its authority within the spheres defined in the same constitution.

A federal constitution differs from a unified constitution in this sense that whereas the latter recognises the existence of only one government which is supreme in all matters concerning the state—without any kind of reservation whatsoever—the former, being by its very nature a contractual agreement, necessarily distributes the powers pertaining to administration between the several state governments on the one hand and the federal government on the other. So that "Two requisites seem necessary to constitute a Federal Government. On the one hand, each of the members of the union must be wholly independent in those matters which concern each member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of members collectively".† And by a federal constitution we mean that constitution by which "one important part of Government is discharged by a number of different authorities belonging

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\* Dicey, 'Law of the Constitution,' Edition 8th. p. 153.

Encyclopædia Britannica, Edition 13th. Vol. X, p. 233.

A. P. Newton, 'Federal and Unified Constitutions,' 1923 Edition, p. 2 (Introduction).

A. P. Poley, 'The Federal Systems of the United States and the British Empire,' 1913 Edition, p. 1.

† Freeman, 'History of Federal Government', vol. 1. pp. 2-3.

each to one district or province of the country, and another part of the Government is discharged by a single authority distinct from all the others and belonging to the whole country".\*

To sum up, in a federation the authority of the several Governments of the states is in juxtaposition with that of the Central Government. Federalism presumes that the Central Government cannot in any way encroach upon the authority of the states. Although the Central Government covers the whole country and the State Governments definite territories which are integral parts of that country, yet neither the Central Government can interfere with the powers of the Governments of the states nor the *vice versa*.† Even then the Governmental machinery runs smoothly because the powers of the two sets of Governments are more or less exclusive and clearly defined and assigned by the constitution. To borrow an illustration from geometry, we can say that in a federation the states are like circles touching each other externally and not internally, the circle of the Central Government surrounding them all.

### (C) ESSENTIAL CHARACTERISTICS OF A FEDERAL CONSTITUTION.

This brings us to the characteristics of a federal constitution. A close study of the constitutions and actual working of all federations shows that there are certain points common to all of them, which distinguish them from unitary constitutions. These we shall now discuss in detail.

\* Lord Charnwood. 'The Federal Solution', p. 55.

† "We may then recognize as a true and perfect Federal Commonwealth any collection of states in which it is equally unlawful for the Central Power to interfere with the purely internal legislation of the several members and for the several members to enter into any diplomatic relations with other powers." Freeman, 'History of Federal Government,' Vol. I, p. 10. Here Freeman has cited only diplomatic relations as the sphere of the Central Government, but there are many other powers of that government, which will be discussed in Chapter IV.

*The Importance of the Constitution and its written-rigid character.*

No doubt, all constitutions, whether unitary or federal, are legally supreme so long as they last. But in a federation the constitution occupies a place of peculiar importance which results from the fact that it is federal. As has been pointed out, a federal constitution is an agreement between a number of states that combine together to establish over themselves a new government to which they, by mutual agreement and of their free will, assign a certain part of their authority. The federal constitution, which thus comes into being by this deliberate resignation of some of their powers by the component states, contains the terms and the conditions of the contract between those states on the one hand and the newly established central government on the other. So that when the federation has been established each government, whether state or central, exercises its authority just in accordance with the provisions contained in the constitution and is not supposed to go against any of its provisions. For if it did there can be no limit to its power and hence neither the central government nor any of the state governments can understand the extent of its own authority or that of the other; and therefore, there can be no security to any of them and this insecurity is bound to result in utter confusion which might ultimately lead to the subversion of the polity itself. Now it is clear that in unitary states in general there is not this peculiar agreement or delimitation of powers of government or this existence of several governments; necessarily, therefore, the constitution of a federal state becomes peculiarly important as contradistinguished from a unitary constitution.

To illustrate this special feature of a federal constitution a few examples may be mentioned. Great Britain is a

unitary state with an unwritten and most flexible constitution. There the powers of the legislature, *i. e.* the Parliament, are unrestricted.\* Parliament can easily, if it likes and if the country supports it, change the form of Government, even abolish monarchy. It can change its own constitution, abolish the House of Lords or pass any other important enactment† in the same way as it can pass a turn-pike bill, and it cannot, for that, be questioned in a court of Law. In fact, as Sir John Holt has pointed out, "An Act of Parliament can do no wrong, though it may do several things that look pretty odd."‡ France too, has a unitary constitution which is written and rigid and which prescribes limits to the powers of its legislature, *e.g.* the legislature cannot change the Republican form of Government though the validity of its acts cannot be questioned in a law court.§ But the constitution of France can, in all other respects, be easily altered and for that matter materially revised. The rigidity is not, therefore, very great because the constitution can be largely made to take any form the French legislature likes to give it. Contrary to all this, there is the constitution of any of the federations which has by delimiting the powers of every legislature under it and by becoming the anvil on which the validity or otherwise of every legislative enactment of any of its legislatures is tested and also by holding the equipoise

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\* Cf. the well-known remark of De-Llome that "It is a fundamental principle with the English lawyers that Parliament can do every thing except making a woman a man, and a man a woman."

† The passing of the Reforms Acts of 1832, 1867, 1884, 1911, and the recent enfranchising of women are examples.

‡ In the Judgment in the case "City of London *Versus* Wood" (1700) 12 Mod, 669, at pp. 687—688 quoted by Riddell at p. 12, note 12, in his book "The Canadian Constitution in Form and in Fact."

§ Constitutional Law of August 14, 1884. Vide R. Poincare, "How France Is Governed," pp. 162—163.

between the several governments concerned, become supremely important in a way in which no unitary constitution could ever possibly be conceived to be. And no legislature in a federation can enact any law repugnant to the constitution, for if it shall do so, such a law shall be invalidated by the functionary authorised on this behalf by the constitution itself. It goes without saying that the provisions of a federal constitution are the only guarantee which the federating states or the central Government accept for their existence.

Now the constitution being supreme and its provisions a contract between the combining states, it follows that it should be so defined as to be clearly and unambiguously understood. That is to say, it should be a written document. Though the modern tendency, aiming at precision and clarity, is in favour of having written constitutions and with the singular exception of Great Britain almost all important nations have their constitutions in a written form, yet a unitary state can easily afford to have an unwritten constitution, but a federation cannot but have a written constitution. For when a federation is about to be formed the several federating states have to decide upon the terms on which they are prepared to federate. This is a complicated contract affecting every sphere of their erstwhile absolute independence and so they have generally to draw the terms in clear and definite words which have necessarily to be reduced to writing if future interpretations are to be clear and misunderstandings are to be avoided. An attempt is bound to be made to settle all possible questions that are likely to arise even in the remote future, though in certain cases some extremely complicated matters may be left unsolved. In the United States of America the fathers of the federal constitution knowingly shelved the problem of secession of states as the handling of the same threatened the scheme of the federation itself.

Again, a feature of the supremacy of a federal constitution is its peculiar rigidity. No doubt all written constitutions in modern days are more or less rigid, but the rigidity of a federal constitution is an inherent feature of its character and cannot be avoided as may be done in the case of a unitary state. After deliberations lasting over a long period and with due regard to all aspects of the question it is put into the final form; it would, therefore, be sheer folly to expose it to easy and frequent changes. The states in a federation practically surrender their individual sovereignty on certain conditions mutually agreed upon after very great sacrifices on their part, and naturally they do so under specific guarantee for the maintenance and observance of those conditions by all the parties concerned, in the discussion of which each state individually and all states collectively take their part and contribute their share. Hence the constitution which is the result of such prolonged discussions cannot be left flexible as the constitution of any unitary state can easily be. Apart from all this, it is common experience that legislatures are, sometimes, elected in an excitement produced by the voters' attaching an undue importance to an ordinary question. In such feverish heat of excitement persons are elected to legislatures, who are lacking in the qualities necessary in a capable and far-sighted legislator. Now to allow unfit and inexperienced persons, who have risen to the position of legislators merely by virtue of having played upon the sentiments of the voters, to change the constitution which had been framed after deep and thoughtful deliberations by the most capable persons is to defeat the real object of peaceful and orderly administration of a federation. It requires the talents of men well versed in the art of constitution-making to suggest and incorporate necessary changes in a document of the complex and peculiar nature of a federal constitution, which might satisfy the many interests and indeed prove to be of a lasting nature.

But, at the same time, it seems inconceivable that a constitution framed by the people of a particular generation should be incapable of changes in the light of further needs and experience. For in drawing up a constitution it is difficult to understand precisely all the factors even of that time much more so to provide for the future. But the authority to amend a federal constitution must not and cannot be vested in a body in which each state and all states have not an effective voice. Therefore, the ordinary legislature in a federation cannot be the amending body.\* And neither the central Government nor the state Governments should be given the sole power to amend the constitution. For if any of these be the amending authority it cannot have behind it the sanction of the body that framed the constitution. It is for this reason that in a federation a third agency has to be created to amend the constitution.

*Co-existence of Two Governments.*

Another special feature of a federal state is the co-existence of two Governments, the central or national also called the federal Government, and the state or provincial Governments. As has already been mentioned, the federating states, mutually agreeing together, set up above themselves the Central Government for the exercise of certain specific powers without losing their own individual existence. This new government, after the establishment of the federation, works within the sphere of authority allotted to it, just as the state governments work within the spheres allotted to them.

Now, when a federation is formed it is either with the explicit consent of the citizens of all the federating states, taken by means of a referendum as was done in Australia, or by a clearly implied consent of those citizens who elect

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\*Dicey, 'Law of the Constitution,' Ed. 8th pp. 142-143.



the delegates to the convention which brings about that federation as was done in U.S.A. Hence the authority of a federal Government is ultimately derived from the citizens of several states, within the sphere of powers allotted to it just as the authority of the state Governments is derived from the same people for the exercise of their powers. In the same way the transfer of a part of authority from the state governments to the federal government involves the transfer of such part of the citizens' allegiance from the former to the latter government, as is necessarily connected with the exercise of that transferred part of authority which is now vested in the federal government.\* The federal government, therefore, exercises direct authority over the

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\* "...the federal government, in turn, in the exercise of those specific powers acts directly, not only on the communities making up the federation, but on each individual citizen...and the citizens of a federation consequently owe a double allegiance. one to the state, and the other to the federal government. They live under two sets of laws, the laws of the state and the laws of the federal government." *Encyclopaedia Britannica*. Vol. X, p. 233.

Also J. Bryce. "Studies in History and Jurisprudence," Vol. II, p. 490.

Dealing with this subject A. P. Newton writes :—

"The Central Government acts not only upon the associated states but also directly upon their citizens." '*Federal and Unified Constitutions*,' 1923 *Ed* p. 5.

Bryce is quite clear on this point. He defines properly called federal states as 'States in which the Central Government exercises direct power over the citizens of the component communities.' '*Constitutions*,' p. 27.

Again on page 288 of this book Bryce reiterates that "The essential feature...consists in the existence above every individual citizen of two authorities, that of the state, or Canton (as in Switzerland) or Provinces (as in Canada), to which he belongs, and that of the Nation, which includes all the states, and operates with equal force upon all their citizens alike. Thus each citizen has an allegiance which is double, being due both to his own particular State and to the Nation. He lives under two sets of

individual citizens of the states for all those purposes that fall within its sphere of activity and also over the states as communities. By virtue of the terms of the compact of federation the several states transfer their authority over certain spheres of state activity. These spheres of governmental activity cover all the states and as a necessary corollary of this transfer of power the states lose their external independent character and the federal government assumes all rights to enter into international matters as an independent nation and all the obligations into which the federal government enters with other nations *ipso facto* become binding on the states. But the internal independence of the states remains unimpaired.

In his every day life a citizen in a federation is under two governments, the central and the state. It is true that the sphere of authority of the state government very vitally affects the citizen's activities at almost every turn, *e.g.* in Education, Health, Sanitation, Law and Order and in the case of most of the taxes he pays. But in such other matters as Posts and Telegraph, Railways, Military Laws, and his dealings with foreign countries, he truly feels the hand of the central government on himself and for any violation of the rules or laws of this government he is as much directly answerable to it as he is to the state government when he infringes the state laws, and the state government cannot protect him from the punishment which the central government chooses to inflict on him.

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laws, the laws of his State and the laws of the Nation. He obeys two sets of officials, those of his State and those of the Nation, and pays two sets of taxes, besides whatever local taxes or rates his city or country may impose."

Now this theory of double citizenship in a federation has been given effect to in almost all the federal constitutions of the world. Article XIV of the constitution of the United States of America lays down that "All persons born or naturalised in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside...."

And this is essentially the result of the federal tie that binds the state to the central government because, "The test of Union is the utter sovereignty of the Central Government, which must be free and able to act directly upon, and to touch, without the favour of any intermediary, the humblest of its citizens in the remotest corners of the dominions. Its subjects are not states but people....."\* That is to say, in its own sphere of authority, the Central Government is independent in the same manner as the State Government is in its own, as Freeman points out: "The Federation is as truly sovereign in its own department as the state is in its own department. Resistance to the lawful commands of its Government is as much rebellion as resistance to the lawful commands of a monarch. An injury done by one state to another state or to a citizen of another state is not a matter of international wrong; it is a mere breach of the peace, to be rectified by the Federal Courts or, if need be, to be chastised by the Federal Army. The theory is exactly the same..."†

And this practice has not created any inconvenience or trouble to the citizen in the federation, because the two Governments have distinctly separate spheres of activity and there are two different sets of laws which are not mutually contradictory or antagonistic but supplementary, with different objects, but all combined together forming the complete laws of the federation.

It is true that in modern days administrative decentralization is on the increase even in a unitary state and there are local boards and municipalities dealing with local subjects. But the state government in a federation greatly differs from these bodies in this sense that whereas a state government exists inspite of the central government and independent of its control, these local bodies owe their

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\* F. S. Oliver, 'Alexander Hamilton,' p. 452.

† Freeman, 'History of Federal Government,' Vol. I. pp. 102-103.

existence to a supreme Government which creates them and can also destroy them and their laws are strictly bye-laws. In short, in a federation the two governments, central and state, exist together, a characteristic only of a federal type of polity.

*Location of Sovereignty in a Federation.*

There being two distinct governments, the question arises, where does sovereignty in a federation lie? Do the states possess it, or the central government, or the citizens of the states separately, or all the citizens of the federation collectively? The question has clearly two aspects, theoretical and practical, and it can be answered in two ways.

From the strictly legal point of view, a federation is the result of the cumulative consent of not only the states but their citizens as well. From the domestic view-point it is the citizens whose willingness for the existence of and obedience to the commands of the state governments are the real source of the authority of these governments. Without their consent the states cannot part with their sovereignty to establish a new government. This is the view held by the advocates of the nationalistic theory of the federation. The other school holds that the parties to the pact that brings the federation into existence are the states in their capacity as separate communities and it is these states that are the real source of the federal authority. This is the view of the advocates of state rights. There is a third view, namely that sovereignty in a federation lies in the authority authorised to amend the constitution. Now in different federations there are different bodies entrusted with the authority to amend the constitution. In some there are the state legislatures, in others the central legislature and in some others the citizens (by means of a referendum,) who amend the constitution. That is to say there is no particular body or

machinery common to all federations, which is the amending body and has the real sovereignty. It amounts to saying that there is no particular sovereign authority in a federation. And this is what Willoughby has asserted. He says, ".....all organs through which are expressed the volitions of the State, be they parliaments, courts, constitutional assemblies, or electorates are to be considered as exercising sovereign power, and as constituting in the aggregate the depository in which the States Sovereignty is located."\* But this is only shelving the question rather than answering it definitely.

Now the first two theories being clear and definite, it remains to examine them to see wherein lies the sovereignty in a federal polity. The advocates of states rights hold that whenever any states find their interests jeopardised by certain enactments of the federal government they have a right to nullify those enactments within their boundaries; and should it ever appear to them that the federal government is permanently hostile to their interests and their remaining within the federation is no longer consistent with their considered views they can even go out of the federation. The greatest exponent of this theory of states rights was John C. Calhoun. The other school of thought holds equally strongly that when once the states have voluntarily entered into the union they have no right to secede from it. This theory of the rights of the nationalist government was championed by Daniel Webster in the United States of America and it found its supporters in the federalist party. The question first arose early during the administration of John Adams when the Federalist Party was in power in the Congress. As a result of their relations with France the Congress passed the Alien and Sedition Acts. This action of the Congress

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\*The nature of the State', p. 307, Ed. 1911.

enraged the Republican party who met to express their disapproval of these Acts and passed the famous Virginia and Kentucky Resolutions which expressed the view that every state had a right to nullify within its boundaries such acts of the federal government, as were, in its opinion, in excess of the powers of the Congress. The opponents, the federalists, on the other hand, insisted that the sole authority to decide the unconstitutionality of any act of the Congress and to check it from going beyond its specified powers was the Supreme Court. The situation was for the time being saved by the repeal of the Alien and Sedition Acts. But again in the year 1812 when war broke out the states of New England, which were opposed to the war, threatened to go out of the federation and proposed resolutions affirming the rights of individual states to nullify those acts of the Congress to which they were opposed. Again in the year 1828 the Congress imposed tariff which adversely affected the interests of the people of South Carolina who not finding supporters in other states contented themselves by invalidating the tariff in their state. This action seemed to precipitate the issue of the secession of states but the Congress passed a compromising resolution which postponed the issue.

It was the recurrence of these conflicts of interests that brought forward the two opposing theories of Calhoun and Webster. Calhoun advocated the right of a state to nullify within its borders any acts of the Congress and also defended the right of a state even to go out of the Union. Although he did not actually advocate this right of secession yet his preachings went very far in actuating the Southern States in 1861 to revolt against the authority of the Central Government. Calhoun held that the states had entered into the compact of federation to vest the federal government with the authority of exercising certain

specified powers and thus they had every right to withdraw that authority from the body which they had themselves of their free will brought into being, if at any time they found that their interests suffered at the hands of that body. He maintained that sovereignty being from its nature indivisible the states could not transfer any part of it to another body. That is to say he advocated the doctrine of nullification as well as that of secession. He could not allow the majority to tyrannise over the minority by enacting laws prejudicial to the latter's interests. Thus Calhoun based his theory on two principles, (1) Sovereignty being indivisible, two bodies cannot be sovereign in the same area or over the same people, and (2) when a certain amount of authority can be delegated by a body when it is in its interests to do so, that authority can also be withdrawn whenever the withdrawal is in the interests of the delegating body. There is enough matter for serious consideration in these arguments as also in those advanced by Daniel Webster who advocated the Nationalist Theory of Union. Webster contended that the authority of the Central Government was derived not from the governments of the States but from the people of all the states taken as a whole. He supported his doctrine by the actual words in which the preamble to the U. S. A. constitution was drawn up. This preamble runs, "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Webster's supporters, the members of the Federalist party, among them notably Abraham Lincoln, who supported him when the Civil War became imminent, challenged the sovereignty of the states on the ground that prior to the union these states were subordinate to the

British Parliament and were, therefore, by no means sovereign. Subsequent events, the chief of them being the decisions of the Supreme Court,\* strengthened the view of the Federalists.

Let us now dispassionately consider the pros and cons of the two conflicting theories. The problem resolves itself into three factors, viz., (1) the location of sovereignty in a federation, (2) the indivisibility of sovereignty, and (3) the rights of the individual states to assert their will. Federalism is, from its very nature, an off-spring of democracy. Where democratic institutions are not in existence federalism cannot fully thrive, for the basic principle underlying federalism is the recognition of the rights of smaller political communities to develop along their own lines. Now if this right is to be conceded to a state within a federation it goes without saying that it cannot be denied to smaller groups of people within the state or for the matter of that to individual citizens themselves. To enable a political community to thrive and prosper it is essential that its individual members should be free to develop their constructive faculties. For it is only the result of the cumulative efforts of the individual citizens of a state that is, in a wider outlook, considered to be the development of the state itself. The citizens can exercise this freedom only where they have the opportunities to exercise their wills. The more an individual in a polity is allowed to express and assert his will unhampered by others the more that polity approaches democracy. It is, therefore, clear that the plant of federalism can take root and grow best in the soil of democracy and in an atmosphere of freedom. Prof. Laski has rightly remarked, "The structure of our social organization must be federal if it is to be adequate. Its pattern involves, not myself and the state, my groups and the state, but all these

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\* A fuller treatment of the decisions of the Supreme Court is made in Chapter IV.



and their inter-relationships.”\* This is exactly what democracy aims at. Thus, federalism being less compatible with any other form of polity than a democracy, it is clear that sovereignty in a federation is located in the individuals of all the states taken as a whole and nowhere else. The state governments cannot usurp that sovereignty and exercise the right of secession from the federal union, irrespective of the wishes of the citizens of those States. If they do so they flout the wishes of the people to whose cumulative wills those State governments owe their existence. But this is true only when democratic States federate together.

With regard to the second point, viz. the indivisibility of sovereignty, it may be pointed out that when the citizens vest one body with some functions of government and another with other functions, there is no division of sovereignty but only a bifurcation of activities. Neither the central nor any state government can enact any laws in conflict with the powers assigned to each by the constitution which delimited those powers according to the wishes of the citizens, the ultimate makers of that constitution.

Now remains the third and the last point, viz. the right of a minority to assert its will. It is true that in a democratic polity like a federation every organised group of citizens who may form a minority has a right to free existence and to assert its will, and the majority has no right to tyrannize over the minority. But it is also true that the interests of the majority should not be allowed to suffer because of the antagonistic views of the minority. In all forms of polity we can at best secure the greatest good of the greatest number with the minimum of trouble and annoyance to the few. We cannot plant a government wherein each and every individual will be satisfied with the environments

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\* H. J. Laski. 'A Grammar of Politics,' 2nd Ed. p. 262.

in which he is placed. Such an Utopia is only the creation of an imaginative mind, existing not on this earth but in a dream-land. This should not, however, be supposed to mean that a minority, however insignificant in number, is to be left helpless and impotent to exercise its faculties—this will mean loss of so many minds to the cumulative efforts of the whole community. What is, therefore, practicable is a compromise or agreement on a maximum scale, because if an unhampered ruling majority will be tyrannical to the minority, a ruling minority will surely result in political stagnation and ultimately in disruption.

Human energy is essentially kinetic and not static. Therefore conflicts are sure to arise in the future not only between one individual and another but also between one political community and another. How best to adjust differences and remove the causes of conflicts is, therefore, the chief problem in a federation where the different state governments and the central government are sometimes bound to disagree. These rival bodies—central government on the one hand and state governments on the other—having derived supreme powers of legislation and action within different spheres of political activity, are sure to feel jealous of each other. Whatever great efforts be made to remove the causes of conflicts and to arrive at compromises “the possibility of conflict though it can be minimised, is never finally absent.”<sup>\*</sup> When once the central government has, after due deliberation, passed a law most states and most people are sure to respect it for the simple reason that the legislature is bound to take cognisance of the majority view and the popular feeling, and unless the law is acceptable to the majority it cannot possibly be passed by the legislature which generally mirrors the views of the majority. But if a minority finds the law unacceptable to itself, the best way to see its

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\* Laski. ‘A Grammar of Politics,’ 2nd Edition p. 244.

will prevail is to convince the majority and convert it to its own views by discussion, persuasion, and all other constitutional means. It is then the duty of the majority to amend the law in such a way that the minority may respect it. But it must not be forgotten that "Respect for law cannot be guaranteed, all that we can do is to reduce the area of disrespect it will encounter."\* In any case the majority must listen to the wishes of the minority for "We can then evaluate the factors of solution before the differences are precipitated. We can examine before the request becomes a demand and the demand a threat."† It is true that the views of the majority are often right or at least beneficial to the community. But even a majority loses its importance after some time and degenerates into a minority. The changes of ministries in countries having parliamentary institutions is a sufficient proof of this. Prof. Laski rightly observes: "It is the record of all history that no class of men can retain over a period sufficient moral integrity to direct the lives of others."‡ Causes of minor conflicts are easy to be removed, it is only when the conflict has assumed huge dimensions that a political catastrophe is apprehended. In such cases the majority must presume that there is some grave wrong done to the wishes of the minority, and that that wrong must be righted by squarely facing facts and adjusting the differences "Grievance never proceeds to rebellion unless it is deeply grounded in a sense of wrong."§

Whenever one State government, or more than one, who form the minority find that their interests are seriously suffering under any of the laws of the central government that minority party should wait, argue, and try to get the

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\* Laski. 'A Grammar of Politics,' 2nd Ed. p. 244.

† Ibid. p. 255.

‡ Ibid. p. 290.

§ Ibid. p. 284.

law so changed as to make it amenable to its wishes. It has no right whatever to secede from the union when once the entire people of that union have formed that central body. For if this right of secession be conceded to the recalcitrant states the whole polity loses its stability and there is no certainty where this disruption might lead to. In a truly federal union — properly formed after exploring all avenues of community of interests and finding them more strong than points of conflict — there cannot frequently arise grave disputes which may compel a part to go out of it. In fact, whenever the union breaks up after the secession of a part, it must be presumed that the union was from its nature not federal but only an alliance. Thus we conclude that once a federation has been formed after the states so federating have taken into consideration all the implications of such a union the states have no right of secession from it. The practical working of this aspect of the union will be discussed in later chapters while dealing with the growth of federalism.

But apart from all these orthodox theories and legal arguments there are overwhelming forces in practical life, whose increasing volume definitely reacts upon and alters substantially all that flows from these theories. It may be that what these theorists and political philosophers thought and expressed is applicable to certain cases or even influences our view of state and government, at one time or another. And it is undoubtedly true that all political philosophers were thinking of their particular ages and their environments were materially forming their views. But to modern life their views are of little importance. Science has altered not only the internal life of a nation by introducing new factors, *c. g.* labour, capital and other economic and social institutions, but it has also altered international policy. No nation can now think entirely of its own self as it is no longer self-contained. It depends considerably

on other nations for the satisfaction of many of its wants. And in fact international decisions and law have really and substantially limited its external independence—we may call it sovereignty if we please—and now we cannot conceive of a nation doing even in external affairs absolutely what it pleases. Questions of armaments, colonial policy, commercial laws, are all now influenced by decisions of several nations collectively.

Even in internal affairs a nation cannot blindly and unrestrictedly exercise its authority. Since the War of 1914-18 nations have often met, and they regularly meet, with humanitarian objects, to arrive at decisions which affect the well-being of their citizens as men. The decisions of the International Labour Conferences, such as limiting of the hours of work, welfare of labour, child and female labour, all contribute to alter the idea even of internal sovereignty of a state. In fact as our political horizon increases our view of sovereignty changes and we begin to conceive the citizens of the whole world as belonging to one family. With this change, all nations are losing their absolutely independent character. They are becoming more and more interdependent, and in their internal as well as external affairs they have to take into consideration the effect which their actions would produce upon the world. In view of these forces, therefore, we cannot conceive of absolute sovereignty as enjoyed by a particular state over its citizens. We are more and more driven to the belief that as governments exist for the good of the citizens, it is the latter who not only change the form of their government but are the real source of its authority. And in federations this ideal is being rapidly realised.

### *Special Position of the Judiciary.*

The third and the last characteristic of a federal constitution is the special position of its Judiciary. This

characteristic is a natural sequence of the first two, viz. the supremacy of the constitution and the co-existence of two governments. The federal constitution being the supreme law of the land, embodying the definite terms of contract between the federating states and the co-existence of two governments involving a division of powers specifically assigned to each, it is necessary that there must be some agency to uphold the constitution and to keep the two governments within proper limits. For it is not at all surprising that the various state governments or the central government may sometimes pass laws—the probability is that they would often do so—which may contravene the spirit of the constitution and may thus transgress upon each other's authority. Who should then guard against this transgression of authority? Again, in the actual exercise of their authority two neighbouring states often happen to disagree on particular issues. Also there may be a conflict of views between the central and the state governments. How are these conflicts to be decided and disputes settled? Evidently the proper agency to settle these conflicts and to maintain the supremacy of the constitution, and to guard against its encroachment, whether by the central government or by a state government, should be of a strictly judicial character with clear authority derived neither from the one nor from the other of these governments alone, for in that case that judicial body may tend to degenerate into a partisan of the government establishing it, but from the constitution itself as it is respected by all the parties concerned. The Supreme Court which the federal constitution generally provides for is vested with the sole and undisputed authority of settling all disputes between the state governments themselves and between the central government on the one hand and the state governments on the other.

In constitutions where the legislature is supreme the judiciary has no such function to perform although it can exercise some restraint by its opinions. But in the case of a federal constitution the necessity of a judiciary which should interpret the constitution and adjudge the validity or otherwise of a legislative enactment of the central or of state governments cannot be questioned. In fact, it is this special position of the judiciary which keeps a federal constitution from falling down. We shall revert to this subject and discuss its practical bearings in chapter IV.

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## CHAPTER II

### HISTORY OF FEDERATIONS.

#### INTRODUCTORY.

In this chapter it is proposed to give an historical narrative of the various Leagues, Confederacies, and Federations that were formed in ancient and mediæval times or have grown into full fledged federations in the modern days.

As pointed out in the preceding chapter, the earliest examples of federal institutions are found in the history of Ancient Greece. In those days there were a number of city-states in Greece, each enjoying the most direct form of democracy in which each citizen was entitled to vote and to exercise power over legislation and general administration. These city-states were autonomous within themselves and free from any encumbrance of allegiance to any external superior authority. But the fear of foreign domination sometimes forced them to come closer together for the primary purpose of self-defence. This need for alliance was felt only in the degenerate period of Greek history. But other factors which contributed towards unity in Greece were a common language ( notwithstanding any local dialects ), a common religion, and common manners. These unifying influences did not affect the city-states in the bright and brilliant period of their history, because each state wanted



to remain absolutely independent. It was only when their freedom was threatened that they of necessity formed unions with varying degrees of cohesion. Even then, we find, these unions dissolved as soon as the fear of foreign aggression was gone but were reformed when the fear again appeared. Thus there was no continuity in them.

(A) *Ancient Greek Contributions.*

Freeman while admitting the true federal character of the Achaian, Bæotian and Aetolian Leagues, insists that the Delphian Amphictyony did not represent a federal government. He says that the Council of the Amphictyony, "represented Greece as an ecclesiastical Synod represented Western Christendom, not as a Swiss Diet or an American Congress represents the Federation of which it is the common legislature."<sup>\*</sup> But this view is not correct for in those days when international diplomacy, colonial policy, and commercial activity were confined within a very limited sphere and people lived a most simple sort of life, religion was the most important basis of all forms of polity. Indeed, to the Greeks of those days it was quite unthinkable to have conceived a polity which was developed by the people of the Middle Ages or those of our own times. It is clear, therefore, that Freeman, unconsciously forgetting the nature of ancient life and ancient polity, has made a very unhappy and indeed unsuitable comparison of Greek political institutions with those of the mediæval or modern days. It is true "that Amphictyonic unions had one of the characteristic elements of federation, namely that they were

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\* Freeman. 'History of Federal Government'. Vol. I. p. 127.

In Greece these religious associations really drew the several cities together and thus developed a federation which had a religious basis for its cohesion. Hence the view of Freeman as expressed in the words quoted above can hardly be taken as denoting a true aspect of the form of ancient Greek polity. We shall revert to this subject later on.

free sovereign states combining for a particular purpose with an elaborate system of representation".\* This proves beyond doubt that the combination of the city states of Greece even in the Amphictyonic League was of a federal character.

(1) *The Amphictyonic League.*

Amphictyony is the name given to the association of independent tribes or city states of Greece which gathered together for purposes of common worship round a religious temple. Although this common worship seems to have been the primary object of an Amphictyonic association, yet the union once formed could not avoid influencing the political life of its associates or members. In Greece as elsewhere common religious worship played an important part in the shaping of the political life of those who were so intimately connected in religion. "Such festival associations, or Amphictyonies, are co-eval with Greek history, or may even be said to constitute the first expressions of a common national history."†

Among the many Amphictyonies formed in Greece one of the most important was the Delphian Amphictyony the members of which had associated together for the worship of their common god at the famous temple of Delphi. The Amphictyonic Council was the central governing body of this Amphictyony. If the chief characteristics of a federal government are existence of two governments (each member state retaining absolute freedom of internal action) and a double allegiance of the citizens then truly this Amphictyony was of a federal character. "The members retained the character of independent and sovereign states, and had equal

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\* Encyclopaedia Britannica, Edition 13th. Vol. X. pp. 233-234.

Cf. Freeman's previous remark. 'History of Federal Government,' Vol. I. p. 127.

† 'Curtius. 'History of Greece', Vol. I. p. 111.

votes in the federal council. This council had a general authority to propose and resolve whatever it judged necessary for the common welfare of Greece; to declare and carry on war; to decide, in the last resort, all controversies between the members; to fine the aggressing party; to employ the whole force of the confederacy against the disobedient; to admit new members."\* A better illustration of a federal form of government in those times, when distance counted for much and consequently, intercourse between distant nations was rare, cannot be cited. As guardians of the common temple as also of the various city-states composing the union, the members of the federal council (The Amphictyonic Council) had to take an oath which ran thus: "They would destroy no city of the Amphictyons, nor cut off their streams, in war or in peace, and if any should do so, they would march against him, and destroy his cities, and should any pillage the property of the God, or be privy to or plan anything against what was in his temple at Delphi, they would take vengeance on him with hand and foot, and voice, and all their might."†

From a careful perusal of this oath which may be considered as one of the earliest examples of interstate law in Europe, two facts stand out prominent; that religion was the primary unifying factor, and that the union had a right to use coercion against refractory members. But it is not at all surprising to find religion transcending the whole structure more than any other motive, for in those days rules of law primarily depended for sanction on religion and morality, and their authority was directly derived from the gods, and to break the law was to commit an offence against the gods.

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\* Hamilton and Madison. 'Federalist' No. XVIII.

† Quoted by Elizabeth York in 'Leagues of Nations'; P. 5.

The composition of the Council, which was called Pyulea, further confirms the federal character of the Amphictyony. Although the city-states composing it were unequal as to size, all of them had perfectly equal rights theoretically at least—within the Council, the smaller tribes casting equal votes with Athens. The twelve composing states had each two votes in the Council. The deputies of the Council were of two classes, 'Hieromnemones' and 'Pylagorae.' The Hieromnemones, who were guardians of holy things, were partly elected and partly chosen by lot and each Hieromnemone had with him two Pylagorae. The latter were elected half-yearly, and were orators and statesmen. All acts were issued as decisions of both these classes of deputies. In addition to these deputies, there were other officials such as secretaries, and a herald, and a general assembly of all the citizens who were present at the gathering. The general meeting was convened by the president of the League, and was only summoned on special occasions.

Although religion lay at the root of this union and common worship was the chief cementing material that kept the Amphictyons together and did not allow them to be disjointed, "the most important result of all was that the members of the Amphictyony learnt to regard themselves as one united body against those standing outside it; out of a number of tribes arose a common nation, which required a common name to distinguish it and its political and religious system from other tribes. And the federal name fixed upon by common consent was that of Hellenes."\*

If the Council had not much of foreign policy of its own it was not because of its imperfections as a federal body, but because in those days neither a fleet had bridged the seas nor the telegraph and the railway had reduced the

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\* Curtius, 'History of Greece'. Vol. I, p. 116.

long distances that lay between the various countries and islands. Yet the Greek colonisers, whenever they left their paternal homes to settle in distant strange lands, always carried with them the manners, customs and the sacred fire of their mother country and kept them safe in their new homes.

The Amphietyony, despite its composition which was theoretically quite sound and perfect, could not achieve the practical results expected of a modern federation. It soon disintegrated and its members fell asunder. There were several reasons to account for this. The various cities appointed the deputies in their separate political capacities with the inevitable result that the idea of a common nationality did not successfully grow in the face of loyalty to the cities. The members felt themselves attached to the cities without feeling any respect for the union. Secondly, the deputies of the stronger cities very often awed and corrupted those of the weaker, and succeeded in getting judgment passed in favour of the most powerful party. This was a clear negation of the principle of equality of the members composing the union, which is so vital to the success of a federation. This principle, therefore, though professed with all enthusiasm in theory, could not survive when brought to the touchstone of experience. "The smaller members, though entitled by the theory of their system to revolve in equal pride and majesty around the common centre, had become in fact, satellites of the orbs of primary magnitude." †

Besides, the Greeks did not realise the supreme necessity of a closer union, and the mutual jealousies and ambitions of the stronger members, chief of them, Athens and Sparta, and the helpless and weak condition of the others made the disruption of their union inevitable; yet this want of cohesion among the members would not have so easily killed the union if the outsiders had not tried to sow seeds of dissensions which

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† Federalist, No. XVIII.

brought about the ultimate break up of the confederacy. Philip of Macedon, jealous of the growing power of Athens and Sparta, was all along playing a watching game. Taking advantage of the mutual dissensions of the Amphictyons, he gladly accepted the invitation of the Thebans and other cities to arbitrate between them by force of arms. In 346 B. C. he succeeded in prosecuting his artful designs, and despite the vigorous opposition set up by Demosthenes he got admitted as a member of the Council. After this event Athens refused to send her deputies to the Pythian games which took place under the presidency of Philip, and the hegemony of Greece passed to Macedonia. Soon afterwards Philip and then Alexander assumed the role of a Master and the Amphictyons were forced to wear Macedonian chains. In this way was brought about the break up of this federation which certainly helped Greece in its unification, and was interesting and instructive as a stepping-stone to later Hellenic federations.

(ii) *The Achaean League, 281 B. C.—146 B. C.*

Another and a more valuable Greek instance is that of the Achaean League. Although this League also met with the same fate as the Amphictyony, yet it was better organised, more efficient, and applied federal principles to a greater degree than its predecessor.

Consequent on the death of Alexander the Great and the resulting dismemberment of his empire, some of the cities of Achaia combined together to form a new league. Originally only twelve cities\* joined this confederation. But the danger of the power of Macedonia and the growing power of Rome, which they feared might any day be used against them, showed the necessity for combined action and soon the membership reached seventy.

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\* These Twelve cities were :—Helike, Olenos, Patrai, Dyme, Phara, Leontion, Aigeira, Pellene, Aigion, Boura, and Keryneia.

The constitution of this League, more efficient than that of the Amphictyony, was purely federal in character.† Each citizen owed double allegiance, to his own city and to the League. The separate city-states were all independent in their domestic affairs and had delegated some specific powers to be exercised by the League. But while retaining autonomy in their internal administration all the states had to submit to uniformity in certain important matters. Uniformity of laws, customs, weights and measures, and money was a primary condition of membership of the League. This cannot be better illustrated than by citing the case of Lacedaemon. When Lacedaemon joined the League, it had to abolish the institutions and laws of Lycurgus, and adopt those of the Achaeans. This was exactly in keeping with the true spirit of federalism.

As for the existence of two governments with separate jurisdiction, the members of the Achaean League had an elaborate system of administration in which the powers of the federal as well as those of the state governments had been clearly defined. The cities composing the league retained their municipal jurisdiction, appointed their own officers, and enjoyed perfect equality among themselves. They were all represented in the senate which had the sole right of making peace and declaring war; of sending and receiving ambassadors; of entering into treaties and alliances; of appointing the Chief Magistrate or praetor,

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† Freeman, 'History of Federal Government,' vol. 1, p. 244. "The constitution of the League was strictly Federal. The Federal form of Government now appears in its fullest and purest shape. Every city remained a distinct State, sovereign for all purposes not inconsistent with the higher sovereignty of the Federation, retaining its local Assemblies and local Magistrates and ordering all exclusively local affairs without any interference from the central power. There is no evidence that the Federal Government, in its best days, ever directly interfered with the internal laws, or even with the political constitutions of the several cities," Ibid. pp. 255-256

Also Encyclopaedia Britannica, Vol. X, p. 233.

who commanded their armies, and who, with the advice and consent of ten of the senators, administered the Government in the recess of the senate, and had an important share in its deliberations, when in session.

The individual citizens of all the member-states in the League exercised directly the right of citizenship in the Federal Assembly which they could, theoretically at least, attend in person, the system of representation being not known to the Greeks\*. In actual practice what happened was, however, far from the theory. People of the distant states could not afford to meet the prohibitive expenses of coming to and going back from Aigion† where the assembly met; while the Athenians attended the meetings in large numbers. If voting had been allowed by heads, Athens would have carried the decisions in her favour and the principle of equality of the states would have broken down. But this difficulty was solved by taking votes by cities, each city having one vote, irrespective of the number of citizens present from a particular city. This device kept the federal principle safe and checked the bigger as well as the nearer cities from getting the lion's share at the expense of the smaller or distant cities.

The meetings of the Assembly were held twice a year, in spring and in autumn, but special meetings could be convened by the President. A Council of 120 members was entrusted with the task of preparing the agenda of the Assembly. The President attended the meetings of the Assembly in person and moved the resolutions which, when they had been passed, became federal laws.‡ The executive

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\* Freeman, 'History of Federal Government,' Vol. 1, p. 269.

† For the importance of Aigion, *cf.* Freeman, 'History of Federal Government,' Vol. 1, pp. 276-277.

‡ A. P.oley, 'Federal Systems of the United States and the British Empire,' p. 37.

*Ibid.* pp. 269-270.



power was vested in the President assisted by a cabinet of ten ministers who were annually elected with the President. The President was called 'Strategus' or General. As in civil so in military affairs the strategus was the head of the federal government. In time of war he *ipso facto* became Commander-in-Chief of the Army. To check the General from becoming dictator or assuming too great a power his annual election had been wisely provided for. After his term of office had expired he reverted to the position of an ordinary soldier. The General was also Admiral of the Navy. There was a regular small Army and a Navy. But when emergency arose mercenary soldiers were employed. The assembly voted all supplies and ratified all treaties and alliances.

Dependent townships were allowed to become members of the League on complying with the conditions and subscribing to the implications of membership. This was a very good device to allow the growth of the League and to save it from becoming a body of tyrants.

There was also a federal court to decide all disputes arising between the states themselves and between the states and the federal Assembly.

Individual cities were restrained from waging war at their own initiative, nor could they receive foreign ambassadors or despatch their own to foreign states. All foreign affairs were under the jurisdiction of the League. This considerably helped the League in becoming a distinct nation. No doubt, sometimes the cities in later days entered into direct relations with foreign states, but this was not the general practice. The federation appointed an officer whose duty was to supervise and authorise all despatches. He was also Under General and a General of the Cavalry \*

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\* A. P. Policy, 'Federal Systems of the United States and the British Empire,' p. 37. Freeman, 'History of Federal Government,' Vol. 1, p. 261.

The successors of Alexander could not tolerate the growing power of this League and they began to seduce the member cities into quarrelling with each other. Rome too encouraged these dissensions and the union dissolved after a period of about a century and a half.

*(B) Medieval Contributions.*

The medieval history of Europe is full of instances of leagues and confederacies formed between independent or semi-independent cities or states, which contained germs of federalism. The most important and instructive of them are the Lombard League, the Hanseatic League, the Confederacy of the Netherlands, and the Swiss Confederacy. In this section we shall briefly describe the rise and fall of the first three only, reserving the Swiss Confederacy to the next section because its history comes down to the present day, and it would, therefore, be more instructive to deal with it along with the history of modern federations.

*(i) The Lombard League.*

During the Middle Ages Italy was under the sway of the Hohenstaufens. The emperors ruled their dominions in the most absolute way characteristic of the age which has very appropriately been called 'the dark days of feudal anarchy.' When Frederick I, also called Frederick Barbarossa, ascended the throne of his ancestors the North Italian cities, chief among them Milan, refused to be governed by the severity so far exercised by the emperors. Determined on subjugating these cities, Frederick advanced into Italy, and laid siege to Milan. This town offered resistance but was ultimately made to submit. No sooner the emperor turned his back than trouble again began to arise. From 1159 to 1162 second siege of Milan continued, but overpowered by the superior numbers of the Imperial

forces the Milanese surrendered, and they brought before the Emperor the keys of their city, banners and their most precious standard 'Carroccio' the rallying point of their army—the sacred car with a mast in the centre bearing a crucifix and the flag of St. Ambrose. The citizens prostrated at the feet of the Emperor and begged for mercy. The Emperor, not satisfied with this humiliation of the Milanese, gave up their city to the vengeance of the soldiers from Lodi, Como, and Cremona, to be wrecked and despoiled. Thus was frustrated the second attempt of the Milanese to throw off the yoke of the tyrant.

Though twice foiled in their attempts to gain liberty the Lombard cities did not lose all hopes of their salvation. They became more and more discontented but Frederick paid no heed to it. At this time the question of succession to the papacy complicated Italian politics. In 1166 Frederick marched into Italy and was crowned in St. Peter's by the Anti-pope Paschal III, but an outbreak of a terrible pestilence in Rome destroyed a large part of the Imperial Army and forced Frederick to go back to Germany. Taking advantage of this suitable opportunity the Lombard communes began to organise resistance. In the early part of the year 1167 the towns of Cremona, Brescia, Bergamo, and Mantua thinking it 'better to die than to live in such shame and ignominy', organised themselves into a league to help each other against the Emperor's unreasonable exactions and to help the exiled Milanese to come back to their homes. Milan was soon rebuilt and the league gained much popularity; even the town of Lodi which had thus far helped the Emperor was forced to join the league. Frederick was powerless to check the progress of the league, and he only put the towns to the ban of the Empire. Towards the close of the year 1167 the Veronese League and the Lombard League,

numbering sixteen towns in all,\* combined together and formed the Lombard Society. They resolved to resist all new exactions of the Emperor to which they had not been subject prior to the reign of Frederick I. During the period 1167-1174 the League grew in strength and popularity. The town of Alessandria was built in honour of Pope Alexander, at the junction of the rivers Tanaro and Bormida. By 1174 Pavia and Montferrat also threw off their allegiance and joined the League which now included 36 towns and all the feudal lords of the Po valley. It was governed by a body of rectors who represented the various towns; it had a common army; and its chief object was to offer united resistance to all Imperial oppression.

This growing strength of the League excited the fears of the Emperor who marched into Italy and laid siege to the town of Alessandria which the Imperial army contemptuously called 'the city of straw.' In the spring of 1175 the timely arrival of the League's Army relieved the situation and compelled the Imperial Army to raise the siege, thus showing that the city of straw was indeed 'the city of iron.' The Peace of Montebello, concluded at this time, proved to be a truce and hostilities were renewed. At this juncture Pavia, the Marquis of Montferrat, and Como returned to their allegiance: Genoa and Pisa also helped the Emperor. This weakened the League but the Milanese determined to lay down their lives in defence of the 'Carroccio,' and a band of nine hundred of them formed into 'the Company of Death.' On the 29th of May 1176 the famous battle of Legnano was fought in which the Company of Death threw the Imperial Army into disorder. Frederick now finding it impossible to crush the Lombard cities

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\* These sixteen towns were —

Bergamo, Brescia, Milan, Lodi, Cremona, Verona, Mantua, Parma, Modena, Treviso, Vicenza, Padua, Venice, Ferrara, Bologna, and Piacenza.

concluded a 6 years' truce at Venice in 1177. In 1183 the Peace of Constance set the seal of approval upon the truce. By this Peace the independence of Venice was recognised; eight of the cities became the Emperor's allies. To the remaining 17 cities Frederick gave up all the royal rights which they either then enjoyed or had enjoyed in the past. These included the rights of concluding peace, of declaring war, of erecting fortifications and of exercising criminal and civil jurisdiction. They were free to elect their own consuls who were to be invested by the Emperor and this investiture was to be repeated every 5 years. They were allowed to maintain the League. On the other side, the citizens between the ages of 15 and 70 were to take the oath of allegiance to the Emperor which was to be repeated every 15 years. The cities were to help the Emperor against all those cities and feudal lords who were not members of the League. All judicial appeals were to be heard by the Emperor's local representatives. The Emperor was to be provided a market and all roads and bridges were to be kept in order whenever he visited Italy. But the Emperor was not to prolong his stay in any town or diocese. This last provision was inserted to prevent him from acquiring undue influence which might endanger the future freedom of the League. Thus, although the cities accepted the supremacy of the Emperor, they got very important rights of freedom.

But this state of affairs did not last for more than a century. After Frederick II (1216-1250) had ascended the Imperial throne his growing power and aggressive designs forced the cities to renew the League. In 1234 they supported the claims of Henry VII and recognised him as King of Italy. In 1235 they solemnly renewed the League under the new name 'Society of Lombardy, the March and Romagna' (Societies Lombardial, Marchial at Romagna). Frederick II declared war and in 1236 he invaded Italy in order to root out the plant of liberty. Milan again

assumed the leadership of the League but was defeated and her standard taken. War raged bitterly for two years with varying fortunes till the year 1250 when the ultimate downfall of the Hohenstaufens removed the fears that had brought about the combination of the Lombard cities. Thus was brought about the end of the Lombard League which had rested on the common fear of Imperial designs. But so long as it lasted there were traces of a confederate alliance which would have lasted longer if only the power of the Hohenstaufens had not so early collapsed.\*

(ii) *The Hanseatic League.*

The downfall of the Hohenstaufen emperors threw Germany into great disorder. Their successors could not keep sufficient control over the various members of the empire. During the thirteenth century all commerce in Germany suffered from want of a strong government with the result that the commercial towns were forced to combine together for purposes of protection of their commerce. Several leagues were formed but the Rhenish confederation acquired great importance. "Its constitution was very loose but the representatives of the associated city states met together in assemblies called Colloquia at stated intervals to decide upon common policy and to apportion the military quotas to be provided by each member of the league. There was a rudimentary federal court to act as arbiter in disputes between members, though it had little effective power to enforce its decisions."\* This confederation did not last for more than a century because of the growing power of the Hapsburgs. On the decline of this confederation lesser leagues were formed in Southern Germany but the cities in the North formed a strong league which was named the Hanseatic League (From 'hansa' a merchant guild).

In the early part of the thirteenth century the merchants who had to live for a considerable time in distant

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\* A. P. Newton. 'Federal and Unified Constitutions,' P. 7.

lands to acquire control over foreign markets, were forced to build their own factories to store up their goods. To regulate the commercial as well as other affairs of the factories officers were appointed whose duty was to maintain order and to conduct necessary judicial business among the residents of the factories. In this way the merchant guilds acquired control over the towns in which they had primarily established themselves for commercial purposes. Community of interest soon brought about an association between these towns: thus the towns on the shores of the Baltic sea and the North sea formed the Hanseatic League.\* The important member towns of this League were Cologne, Lubeck and Wisby.† The members of the League were compelled to establish communication between themselves through the country lying to the south of the kingdom of Denmark. The growing responsibility of the League excited the jealousy of the Danish King Waldemar III who sacked Wisby and carried away a large booty in 1361. This external menace, far from weakening the League, brought its members closer together and they organised united resistance. They raised an army and prepared a fleet and declared war at the end of which Waldemar was forced to grant freedom of commerce through the sound and fishing rights to the Hanseatic League. But he did not keep his promise and war again

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\* "This league did not appear suddenly at a single moment, it was formed bit by bit as one town after another was induced to ally with the rest, until at last all the Chief Cities of Germany and the trading settlements on Baltic shores and in more distant lands were members of this vast association and acquired the name of Hense Towns," Eleanor C. Lodge, 'The End of the Middle Ages,' 1273-1453. p. 233.

† "Cologne, Lubeck and Wisby each formed the centre of a group of towns, of which the chief were Bremen on the Weser; Hamburg on the Elbe; Wismar, Rostock, Stralsund and Greifswald on the Western shore of the Baltic; Eldin, Danzig, Thorn and Konigsberg in the neighbourhood of the Vistula and Riga on the Dwina." Ibid. p. 234.

broke out in 1367. The League had at this time become so much strengthened that seventy seven towns proclaimed themselves as enemies of the King of Denmark. The War resulted in complete triumph of the League and the treaty which was concluded marks the high watermark of Hanseatic power. It recognised the League as a real political force in the North. The various fortifications which were placed in its hands gave it an undisputed control over the passage through the sound and the fisheries in that part of the country.\*

After its victory over the Danish King the League acquired so great political influence that thence forward no king could ascend the Danish throne without its consent. Necessity for defence had brought about real confederation among the members of the League. The common political as well as commercial affairs of the League were managed by a body of deputies who represented the various towns and regularly met at one of the towns, mostly at Lubeck where the archives of the confederation were preserved, at least once in every three years. This body had the authority of deciding all disputes between the various members, of declaring peace and war, of levying contribution on the members towards the common treasury, of determining the amount of duties on imports and exports, and of punishing the refractory towns either by imposing fines or by excluding them from the confederacy, the latter process was called 'unhausing.' But the towns had liberty to join or

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\* It was on hearing of this combination of the seventy seven towns that Waldemar despised their threat and said :—

If seventy seven granders  
Come cackling, come cackling at me ;  
If seventy seven Hansers  
Come crowing, come crowing at me  
Do you think I care two strivers ?  
Not I      care not two strivers.



withdraw from the league and this was a great cause of its weakness.\*

The ultimate break up of the League was brought about by various causes, chief of them being the rivalry that grew between the towns on the Baltic and those on the North Sea; the opening of sea routes which minimised the importance of the Baltic and the North Sea†; and the spread of protestantism which reduced the demand for dry herring, the chief commodity of their commerce. On the formation of the East India Company the English members of the League ceased to take any interest and its centre at London lost its importance. But the geographical dispersement of the League over a wide area weakened the bonds of union to a great extent. The three towns of Lubeck, Bremen and Hamburg continued to remain together till the year 1628. When in 1648 the Peace of Westphalia was concluded the League ceased to exist‡.

### (iii) *The Confederacy of the Netherlands.*

The third and the most organised confederation of this period was the Confederacy of the Netherlands. It was formed of seventeen provinces on the extreme north-west of Central Europe, which were either parts of the tottering Holy Roman Empire or were drawn from the non-imperial domains. During the 14th and 15th centuries there was

\* A. P. Newton, 'Federal and Unified Constitutions,' p. 11.

"At the height of its prosperity the Hansatic League was a real confederation governed in common matters by an assembly of instructed delegates called the Bundestag or Hansetag, in which a decision could be reached by a majority vote."

† Eleanor C. Lodge, 'The End of the Middle Ages,' 1278-1453, p. 238. "What was begun by the herring was completed by geographical discoveries and when new trade routes were opened through the larger oceans the Baltic ceased to occupy the position of importance which had been hers in the Middle Ages."

‡ A. P. Newton, 'Federal and Unified Constitutions,' p. 11

little community of interests between these states except that of common allegiance to the same Prince who was at that time the Duke of Burgundy. The Duke at first used to raise money for the common purposes of this confederacy from the individual provinces but later on he gathered together delegates of the provinces in a States-General. At first the only business of this assembly was to provide money to their political head but, as time passed on, other matters of interest common to the members of the confederation came to be discussed. But the provinces took special care to preserve their independent status. It was only about the middle of the sixteenth century that matters took a new turn when a King of Spain became their overlord. This king, despotic in his rule, imposed heavy taxes on the provinces who resented this encroachment on their independence. When the King laid embargoes on their commerce and also began religious persecution, all the political, economic and religious causes combined to force the provinces to rise against their common lord (1568). At first this war was alleged to have been raged against the evil ministers of the king but this complexion could not be retained for a long time. Even then, while owing allegiance to their common lord, the provinces required some one to rule as long as the war lasted. In the Southern provinces the troops of the King had established sufficient control over the Government but in the North there was nothing left of the Royal power in effect. These Northern Provinces, chief of them being Holland and Zealand, found the right authority in the person of the Stadholder who was but a nominee of the King. In this way the loose confederacy was split into two halves, the South more or less under the Arms of the King and the North independent of this direct control.

We are here concerned only with the history of the Northern Provinces that had developed in the course of the war a confederation on modern lines. The delegates of

Holland and Zealand met together at Delft in the month of April 1576 and under the leadership of their Stadholder, William of Orange, they resolved to resign a part of their sovereignty into the hands of their Stadholder and also determined to perpetuate their League.\* Soon after this the news of Spanish excesses in Antwerp rallied the seventeen provinces round a common standard but this unity could not last for long, for "Differences of religion, and political and economic interests proved too deep-seated to admit of effective common action, and at length on 5th January, 1579, the deputies of the Southern Provinces of Hainault, Douai, and Artois bound themselves in a defensive league at Arras as a preliminary to effecting a reconciliation with the King of Spain."† This action on the part of their Southern allies goaded the Northern Provinces into augmenting the confederation already affected between Holland and Zealand. This was done by the Union of Utrecht which they signed on January, 29, 1579.

In the constitution which is called 'The Act of Union of the United Provinces of the Netherlands' we find almost all the principles of federalism given effect to in a very comprehensive manner. The preamble to this piece of legislation makes it abundantly clear that the dread of the Spanish arms had dictated the necessity for so close an alliance which was effected for ever. By the first article of the Act the Provinces‡ 'confederated and united together

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\* "This Act of Federation not only united the Provinces, but also went far in the direction of unification of the Municipal Republics of which each Province was composed. It was not in the least dictated by theoretical considerations, but was a practical measure of defence devised to cope with imminent military danger. It went so much further than any previous federal agreement in modern times that it marked a very real step forward."

A. P. Newton. 'Federal and Unified Constitutions,' p. 14.

† Ibid. p. 14 and 15.

‡ These provinces which entered into this union were the Duchy of Gueldres and County of Zutphen, the Countries of Holland, Zealand, Utrecht, and the Frisian Ommelands between the rivers Ems and Lauwers, Ibid. p. 44.

for ever to remain in every way and manner as if all were but one single Province, and that they may never hereafter separate nor let themselves be separated, neither by Testament, Codicil, Donation, Cession, Exchange, Sale, Treaties of Peace or of Marriage, nor by any other occasion whatsoever; without any prejudice to the particular Privileges, Liberties, Exemptions, Rights, Statutes, praiseworthy and ancient Customs, and all other rights which any of the said Provinces, Towns, Members and Inhabitants thereof may have.' To carry out these provisions the second and third articles bound the several members to help each other in every possible way whether against Spain or any other foreign power. The fourth article empowered the Generality i. e. the Government of the United Provinces to fortify such places as were found essential to the safety of the whole confederacy, on certain stipulated conditions. Article fifth conferred upon the Generality the necessary authority to impose excise on some commodities for the purpose of meeting the expenditure incurred on the protection of the Provinces. Other articles prohibited the Provinces from entering into any treaties or agreements separately, thus making the Generality responsible for all international relations; provided for the admission of new Provinces or members into the union; established uniformity of coinage throughout the union; and granted freedom of religious worship. All disputes arising between the various members were to be decided by the Stadholder whose decision was held to be final. Utrecht was fixed as the seat for the transaction of all business of the Generality. Article XXII of the constitution provided that "if it should be thought necessary to augment or diminish anything in the Articles of this Union, Confederation and Alliance, in any particular or clauses, it shall be done by the common advice and consent of the said Confederates and not otherwise." All officers as well as all bodies commercial or

otherwise were to take oath of allegiance to the Generality.

No doubt, this instrument of Government, complete in all sorts of details in theory, was not carried out in practice with the same precision with which a modern federal constitution is carried out. The equality of contributions could not be maintained; in fact the more honest had to suffer while those that waived payments always saved much of what was due to the Generality. In practice there was to be noted "Imbecility in the Government; discord among the Provinces; foreign influence and indignities; a precarious system in peace, and peculiar calamities from war."\* The power of taxation conferred upon the Generality could not be successfully exercised. Its failure to work successfully as a federal constitution was due to the want of authority over the citizens directly by the Generality. From this arose the chief weakness of the union which resulted in the establishment of a unitary system of Government after the Congress of Vienna in 1814.†

### (C) *Modern Contributions.*

Though in this section it is proposed mainly to give a history of the federations that have been formed in modern times, it has been considered advisable to include in it a brief description of the history of the growth of the Swiss Federal Government because, of the existing federations, only Switzerland has a continuous and regular history though of a looser kind of union. These unions and federations have

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\*Federalist. No. XX.

† Ibid. "The important truth, which it unequivocally pronounces in the present case, is that a sovereignty over sovereigns, a government over governments, a legislation over communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity, by substituting violence in place of law or the destructive co-ercion of the sword in place of the mild and salutary co-ercion of the magistracy."

been classified into two kinds, *viz.* the *Continental* including Switzerland, the German Empire and the German Republic, and the *Anglo-Saxon* including the United States of America, the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa. This classification has been made for purposes of convenience only. The history of South Africa, though that dominion is not a federation in the strict sense of the word has also been included as it throws great light on the principles of federalism.

(i) *History of the Swiss Federation*

Switzerland, one of the smallest\* countries in Europe, is chiefly mountainous. It is surrounded on all sides by the Great Powers of Europe—Germany on the North, Austria on the East, Italy on the South, and France on the West—and has no sea coast. This situation has very greatly determined the course of her history which has a peculiarity of its own. Her people are mostly agriculturists or manufacturers. They speak many different languages, chief of them being German, French and Italian.† With regard to religion too the population is not homogeneous. In 1920 about 57 per cent were protestants; 41 per cent Roman Catholics; and 5 per cent Jews. In twelve Cantons the Protestants predominate while in ten the Catholics are in a majority. It is these diversities in the population of

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\* The area of Switzerland is 15,976 square miles. The greatest length from East to West is 226½ miles and the greatest breadth from North to South is 137 Miles. (Brooks, Government and Politics of Switzerland, p. 1). The population on December 1, 1920, was 3,880,320 souls which gives an average of 243 per square mile, undoubtedly an amazing figure for a mountainous country. Stateman's Year Book 1923, p. 1310).

† German predominates in 19 cantons and is spoken by 2,750,622, *i.e.* 71 per cent. of the total population, French is predominant in 5 cantons and is spoken by 824,320, *i.e.* 21·2 per cent.; while Italian is prevalent in one canton and is spoken by 238,544 or 6·1 per cent., and other languages by 66,834 or 1·7 per cent. (Vide Stateman's Year Book, 1929, p. 1310).

Switzerland that have, to a great extent, helped the growth of democratic government.

The present constitution of Switzerland is federal. It is of a slow growth. The constitutional history of Switzerland is divisible into five periods, *viz.* the old Confederation 1291-1798; the Helvetic Republic 1798-1803; the Napoleonic Period 1803-1815; the Confederation of 1815-1848; and the Federal Period from 1848 upto the present day.

It was during the dark days of feudal anarchy that the walled cities and mountain communities of the three forest cantons, Uri, Schwyz, and Unterwalden, favoured by their secluded position on the shores of lake Luzern, but in no way on an equal political status, for the first time organised themselves to maintain their rights as well as free communications with the outside world against the attacks of Rudolph of the House of Hapsburgs. After the death of Rudolph his son Albert ascended the throne. He was a very cruel and ambitious man and his succession produced great consternation in the minds of the people of those three cantons which at once formed themselves into a 'Perpetual League,' (1291). It is the constitution of this League which forms the starting point of all subsequent political development in the history of Switzerland. This instrument is a very short piece of legislation, having been drawn up with the primary object of bringing about a defensive alliance between the three cantons\*.

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\*"...Let it therefore be known to all that the men of the valley of Uri, and the commune (universitas) of the valley of Switz and the community (communitas) of the mountain men of the lower valley, considering the malice of the times and in order that they may better defend themselves and preserve themselves better in their rightful status, have promised in good faith to assist each other mutually with help and counsel both as regards persons and goods, within the valleys and beyond, in all they can and will all their efforts against all and singular who shall intend violence, molestation or injury against them or any one of them in persons and goods by contriving any ill whatever." The Perpetual League between the Three Swiss Forest Cantons. August 1, 1291. A. P. Newton, 'Federal and Unified Constitutions', p. 41.

The assassination of Albert in 1308 was followed by a brief period of political instability during which these three cantons presented a united front against the Hapsburgs. To punish this insolence of theirs Duke Leopold advanced with an army of 15,000 men. But only 1300 brave Swiss peasants met the Austrian forces at the pass of Morgarten in 1315, and after a gallant fight drove them into a lake.\* Elated by their amazing victory the three forest cantons renewed their alliance of 1291. They again proved their mettle against the anger of the Hapsburgs twice, at Sempach in 1386 and at Nafels in 1388. These victories established peace between the Austrians and the Swiss, which lasted for about three quarters of a century. The League had already attracted the eyes of some more cantons who, one by one, had joined it for protecting themselves from the Austrian encroachments. By 1353 the membership of the League had reached eight.† This League of Eight was further strengthened by two important agreements made (in the fourteenth century), *viz.* the Priests' Letter of 1370 and the Covenant of Sempach of 1393. This was followed by what Brooks has called an Era of Military power, and during the fifteenth century the cantons went on increasing their territory by acquisitions from neighbouring foreign countries. This has been very well described by Vincent who says that the Swiss of that time "were democrats at home but not abroad."‡ Another victory over Austria gained in 1415 further strengthened the power of the cantons. But religious and political differences, the rural cantons being democratic and the urban aristocratic, resulted in a brief

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\* "It was a ghastly medieval butchery, but it demonstrated the cohesive power of the federated cantons and the fighting qualities of simple peasants even when pitted against the proudest nobility of Europe." R. C. Brooks. *Government and Politics of Switzerland*; P. 25.

† Luzern joined the league in 1332, the city of Zurich in 1361, Zug and Glarus in 1352, and Bern in 1353,

‡ Vincent. 'Government in Switzerland.' p. 23.



civil war, 1442-1450. The peace that followed augmented the membership of the League, which in 1513 reached thirteen. But acute religious differences created further internal dissensions, particularly in 1531 and 1721. Despite all these troubles it is very surprising to find, indeed, that the League withstood all foreign attacks and Switzerland, which for quite a long time was 'a house divided against itself,' maintained its political entity during the unsettled conditions of that period.

The second period of the history of Swiss federation, the Helvetic Republic, lasted for only five years, 1798-1803. In the first year the numerous local risings in Switzerland encouraged the French Directory to send her armies into this country. Proud of the new political arrangements which they had effected in other neighbouring lands, after the model of their Constitution of the Year III, the French established a new constitution in Switzerland, giving it the name of the Helvetic Republic. According to this constitution the country was parcelled out into twenty-two departments each with its local legislature maintaining its autonomy. A bi-cameral national legislature was established in Switzerland consisting of a Senate and a Grand Council, each department sending four representatives to the Senate and eight to the Council. Several other changes\* were introduced in order to reform the various departments of the administration. But though outwardly pretending to establish a republic in Switzerland the French could not for long conceal the real object of their control over the country. They confiscated the state treasure at Bern and drew a large amount of money and a large number of

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\* "A uniform citizenship and a common democratic suffrage were established. Educational, financial, and legal institutions were reformed. Torture was abolished. Freedom of residence and of trade, and liberty of belief and of the press were guaranteed. The new constitution even borrowed from American sources the idea of a constitutional referendum." Brooks. 'Government and Politics of Switzerland', p. 27.

soldiers from the cantons to invade other countries\*. Thus was tyranny, concealed in the hide of republicanism, let loose over the whole country. Very soon the country, particularly the forest cantons who saw a complete subversion of their ancient democracy, rose into revolt against the unwanted guests. The French in trying to put down these rebellions committed great atrocities and massacred the people without discrimination of sex or age. At this time the out-break of a war between France and Austria converted Switzerland into a field of battle.

Apprehending grave danger from this chaotic state Napoleon sent his trusted general Ney to restore order. A conference of the Swiss representatives was called at Paris, which passed the Act of Mediation, 1803, which marked the beginning of the third period. This Act established a 'Confederation' of nineteen† cantons, some of them enjoying representative and others directly democratic institutions according to their previous history. The national Diets were to meet, in turn, in six of the principal cantons. But even the Act of Mediation failed to secure to the Swiss freedom from French influence. They were to contribute 16,000 soldiers to the French Armies. In 1813 three more cantons of Valais, Neuchatel, and Geneva were admitted to the confederation. The period of the Act of Mediation terminated in 1813 with the fall of Napoleon who was its originator.

In the year 1815 the celebrated Congress of Vienna met to reorganise the political map of Europe after the final overthrow of Napoleon. The Swiss demanded restoration of their erstwhile subject territories but the Congress rejected the demand. However, the Swiss obtained a liberal

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\* "The Helvetic Republic was independant in appearance only: in reality it was ruled from Paris and in the interests of France." Ibid. p. 37.

† The six new cantons were Aargau, Ticino, St. Gallen, Thurgau, Vaud, and Graubunden.

constitution known as the Pact of 1815, which marked the beginning of the fourth period. The Pact recognised the equality of status of all the cantons, small or large, and gave each canton one vote in the national Diet. The federal affairs were conducted by the executive officials of the three principal cantons, Bern, Zurich, and Luzern, in turn. And while the autonomy of the cantons was recognised by giving them power to deal with their local affairs particularly assigned to their charge, the national Diet was empowered to maintain order in all districts even by force of arms.\* Though this Pact enabled the cantons to make some progress along liberal lines, and particularly some of them to enter into agreements to establish uniformity of coinage, residential rights and marriage, it did not satisfy the aspirations of the people and so the July (1830) Revolution in France lashed the Swiss into activity and without shedding a drop of blood they effected several important reforms in their constitution.

But only a decade later, religious differences precipitated a quarrel which enveloped the whole country and is regarded as the most important event in Swiss federal history. In 1845 the seven Catholic cantons, Luzern, Uri, Schwyz, Unterwalden, Zug, Freiburg, and Nalais organised themselves into a separate league, called the 'Bewaffneter Sonderbund', to introduce their own policy regarding the abolition of monasteries, taxation of the property of the church, and the treatment of the Jesuits. In furtherance of this policy they invoked the help of some of the neighbouring great powers of Europe. This step threatened a secession from the confederation. The federal Diet, to

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\* "But the most significant feature of the Pact of 1815 was its silence upon such important topics as religious liberty, political equality, the right of assembly, and freedom of the press, all of which were left to the cantons to deal with or neglect as they chose."

Brooks, 'Government and Politics of Switzerland', p. 41.

maintain its authority over these recalcitrants, resolved firmly to break up the union by force of arms (November 4, 1847). Happily at this time the British foreign minister, Lord Palmerston, succeeded in persuading Austria, France, and Prussia to observe strict neutrality in this quarrel and to allow matters to have their own way. The opposing parties took to arms. The Catholic League put in 79,000 soldiers in the field against 100,000 of the Federal Diet. General Dufour, the Commander-in-chief of the federal forces, after a fight of ten days (November 10-19) crushed the rebellion and won victory for the federal cause. The victory of Dufour stopped the secession and decided a great point in federalism. But the old system of administration had to be revised to meet with the wishes of both the parties.

With this revised Federal Constitution of 1848 began the fifth period in the federal history of Switzerland.\* It settled to a great extent the question of federal power as against that of state sovereignty. By establishing a federal post office, a national telegraph, and a uniform coinage it brought about greater cohesion among the cantons. An impetus was given to the improvement of roads, canals, and of the educational and military systems. Subsequent changes brought the constitution in conformity with the requirements of the times. The constitution of 1848 as revised between 1870 and 1874 is the present constitution of Switzerland.

(ii) *The German Empire and the German Republic.*

The German Empire was a product of feudalism. German feudalism was different from the feudalism of

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\* A referendum was taken to pass this constitution. As a result thereof the constitution was adopted by 15½ cantons with a population of 1,827,887 against 6½ cantons whose population was 292,371. It was proclaimed on September 12, 1848. Brooks, 'Government and Politics of Switzerland', p. 16.

France in as much as the former consisted of two kinds of feudal lords; those who were in possession of lands that were their hereditary property, and those who were originally entrusted by the Emperor with the governments of his provinces and were in this way his deputies or local Governors, but who had, by virtue of their wealth and status, later on become hereditary rulers of those provinces. This ruling nobility had acquired immense power on account of the Emperor's long absence in Italy. In this way was created in Central Europe a confederacy—if this term could with any propriety be applied to this heterogeneous group of states—of a large number of semi-independent principalities and free cities, of which Prussia and Austria were the most powerful. At first Austria held the upper hand, but later on Prussia strengthened her position during the reign of her second king, Frederick William I (1713-1740) who had increased his possessions and raised a powerful army with the help of his son Frederick the Great. The latter had again augmented his territories by the acquisition of Silesia, and a part of Poland which was obtained as a result of the three partitions.\*

When Prussia was thus becoming a veritable rival of Austria for supremacy in the German Confederacy, the wave of the French Revolution swept over the whole of Central Europe and effected great changes in Germany, which brought in their train the sense of German nationality†. Napoleon, in his efforts to control the destinies of

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\* "Frederick took Silesia from Austria, and then, joining in the heartless and scandalous partition of Poland in 1772, filled up the gap between Brandenburg and East Prussia with West Prussia and the Netzt district. The second and third partitions of friendless Poland in 1793 and 1795 added to Prussia the district now known as Posen and a part of East Prussia." Woodrow Wilson. 'The State', p. 443.

† "The first results of the Revolution were the absorption of most of the small states and free cities by their powerful neighbours, and the secularisation of the ecclesiastical principalities. This immensely facilitated

Europe, drove a wedge into the heart of the German Confederacy by constituting the central kingdoms of Bavaria and Wurtemberg and the duchy of Baden into the separate 'Confederacy of the Rhine', and thus separated Prussia to the North and Austria to the South. He himself became the protector of this new confederacy (1806-1813). But by this act he had unconsciously aroused the spirit of German patriotism which ultimately brought about his ruin.\* In 1813 the rise of Germany broke the Confederacy of the Rhine.

Although the Congress of Vienna failed to revivify the old German Empire in 1815, the German states formed themselves into the German Confederation composed of thirty-nine states, big as well as small. The presidency of the Confederation went to Austria and the Vice Presidency to Prussia. There was established a Diet of Agents or ambassadors of the various component states, who voted according to the instructions they received from their respective states. The Diet could declare war, conclude peace, organise the common army of the Confederation, and decide all disputes arising between the member states. But it had no officers to execute its commands and the administration of its laws was entirely left to the states themselves. In case of a recalcitrant state refusing to act, the Diet could

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further progress, for it reduced the number of possible partners in confederation and provided fewer opportunities for foreign intrigues." Newton, 'Federal and Unified Constitutions', p. 28.

\* "The Wars of Napoleon did a great deal more than to suppress petty principalities and give rise to a clumsy confederation. They awakened a sense of German nationality." Lowell, *Governments and Parties in Continental Europe*, Vol. I, p. 236.

"Despite the ease with which he at first divided Germany in order to conquer it, Napoleon discovered at last that he had himself aroused there a national feeling which was to cast him out and ruin him. In 1813 Germany rose, the Confederacy of the Rhine went to pieces, and all Napoleon's plans were undone." Wilson, 'The State,' p. 444.

call upon other states to invade the territories of the refractory state and coerce it into obedience by force of arms.\*

The rise of a new liberal party at this time exercised a wholesome influence. The Zollverein provided for a common tariff which brought the several states together. But the real work done at this time was the strengthening of the power of Prussia which threatened to snatch away the supremacy from Austrian hands.† The liberal party grew in strength until the political convulsions of 1848-1849 in Europe exercised their influence on German politics. The liberals, aiming at the creation of a German state, assembled at Frankfort (May 1848) in a National German Parliament elected by a popular universal suffrage. In fact they offered the crown to Prussian King. But they lost much of the valuable time in fruitless discussions and this gave Austria sufficient time to regain her ascendancy. The liberal movement was for the time being suppressed until the advent of Bismarck on the scene of Prussian politics.

Coming from a lesser order of nobility, Bismarck by sheer dint of his personal ability, made a mark on German policy and indeed changed the whole face of European politics. He foresaw the formation of a German nation

\* Speaking of the Germanic Confederation Lowell says :—

"This was not properly a federal union, but rather a perpetual international alliance, the States remaining separate and independent, except for matters affecting the external safety of Germany."

'Governments and Parties in Continental Europe,' Vol. 1, page 234.

Woodrow Wilson remarks :—

"The arrangement was little like national union; the large states had a preponderant representation in the Diet, Austria dominating all; and each state, whether great or small, was suffered to go its own way, make its own alliances, and fight its own wars, if only it refrained from injuring any one of the Confederates."

'The State,' pp. 144-145.

† "Prussia became more of a unit round which the smaller states could coalesce." 'Federal and Unified Constitutions,' p. 29.

only in the strengthening of the Prussian power and the exclusion of Austria. What the liberals had unsuccessfully tried to accomplish by persuasion and argument Bismarck completed by his policy of 'blood and iron.' King William of Prussia at this time agreed with Bismarck in the furtherance of his policy and consequently made him the president of the Council. Bismarck, however, failed to convince the Council of the wisdom of his policy and the chamber refused to pass his budget. The Iron Chancellor ruled without a budget. In 1864 he wrested the two duchies of Schleswig and Holstein from Denmark, but he quarrelled with Austria on the manner of their disposition. This resulted in the war of 1866 in which Austria was completely defeated and expelled from the confederation. Bismarck annexed all the smaller states that had sided with Austria.\* He then formed the 'North German Confederation' to the North of the river Main. The king of Prussia was made its President, and two legislative chambers were established—the Reichstag and the Bundesrath. Four years later in 1870 the Franco-German war broke out. The enthusiasm aroused by the war enabled the four states to the South of the Main—Bavaria, Wurtemberg, Baden and Hesse—to join the Confederation on much better terms, having derived special privileges as the price of their union. The Confederation was renamed the 'German Empire,' and a new constitution was drawn up.

The legislative power was vested in the Reichstag and the Bundesrath. The Reichstag, or the lower house, consisted of 397 members, Prussia alone sending 235 representatives to it.† They were elected by universal

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\* These were Hanover, Electoral Hesse, Nassau, and Frankfurt. Schleswig was also annexed.

† The representation of the several states in the Reichstag was as follows —

Prussia 235, Bavaria 48, Saxony 28, Wurtemberg 17, Alsace-Lorraine 15, Baden 14, Hesse 9, Mecklenburg-Schwerin 6, Saxe-Weimar 3, Oldenburg



suffrage. The power of the Reichstag extended to all legislative measures as it possessed the right to initiate legislation. The term of its office was five years but it could be dissolved earlier by the Emperor with the consent of the Bundesrath. The Bundesrath, or the upper house, consisted of 58 members of which Prussia alone claimed 17.\* The members were more or less delegates of the different states and voted according to the instructions of their governments, hence all the delegates of a state had to cast their votes similarly on the same question.† Fourteen negative votes could veto a measure and as Prussia alone commanded seventeen votes she practically exercised the power of veto. The powers of the Bundesrath were, indeed, so great that it virtually became an 'extraordinary mixture of legislative chamber, executive council, court of appeal, and permanent assembly of diplomats.' It had the last voice in legislative measures and was the chief executive organ. It was also the final court of appeal. It could order the forces of the Empire to subdue a recalcitrant state. It was not elected at any particular time; its members could be appointed or dismissed at will by the several states. Because of this character and its power to dissolve the Reichstag it exercised great authority and was in this

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3, Brunswick 3, Hamburg 3, Saxe-Meiningen 2, Saxe-Coburg-Gotha 2, Anhalt 2, and the rest 1 each.

\* The 58 members were distributed thus :—

Prussia 17, Bavaria 6, Saxony and Wurtemberg 4 each, Hesse and Baden 3 each. Brunswick and Mecklenburg-Schwerin 2 each, and the rest one each.

† "The members of the Bundesrath are diplomats rather than senators. They enjoy at Berlin the privileges of foreign ambassadors, and are appointed and removed at will by the States they represent,—which also pay them or not as they please. The votes they cast are the votes of the States, not those of its representatives and it is therefore provided that all the delegates of a State must vote alike." Lowell, 'Governments and Parties in Continental Europe,' Vol. 1. pp. 261-262.

way quite different from the upper chambers of other European countries.

The Emperor was the head of the Executive. He was commander-in-chief of the Imperial army ; he could wage war or conclude peace. He represented the Empire in all international affairs. He summoned the legislature and dissolved it ; he promulgated all laws. As King of Prussia he exercised great powers. In this capacity he could veto legislative measures by instructing the 17 Prussian members of the Bundesrath to cast their votes in a particular way ; he appointed the Imperial Chancellor. The Chancellor was the only federal officer, all others being his subordinates. He was responsible not to the legislature but to the King of Prussia. With the help of the 17 Prussian representatives in the Bundesrath he carried Prussian will in all affairs. His powers were, therefore, very great.\*

The Judiciary consisted mainly of the Courts of the several states, whose organisation and procedure were, curiously enough, determined by the statutes of the Empire. So that the judges were appointed by the local sovereigns but were guided by the rules of the Empire.

Let us now investigate the nature of this curious constitution of the German Empire. The member states had no equality of status whether in the counsels of the Empire or in their internal administration, Prussia overshadowing all, and the bigger states having derived special privileges by joining the Confederation at a later date. Some of these latter even controlled their own militia. The states did not enjoy a democratic constitution so very essential to the stability and smooth working of a federation. There was a strong legislative centralisation in the Empire with an executive decentralisation. The Central Government could

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\* "The Powers of the German Chancellor in Bismark's time were greater than those of any other man in the world....." Lowell, 'Governments and Parties in Continental Europe,' Vol. 1, p. 279.

legislate on all matters on which U. S. A. Congress can, and on many more that clearly fall within the jurisdiction of the states in U. S. A. But all these laws were executed by the officers of the states, there being no system of federal officers. The King of Prussia, in his dual capacity, wielded very great powers. The Empire was no federation in its real sense, but, as Lowell has rightly observed, "The compact could not fail to resemble that between the lion and the fox, or rather a compact between a lion, half a dozen foxes, and a score of mice."\* The Empire did not exercise direct authority over the whole population but over the local princes and free cities. Of course, the people of all the states enjoyed German citizenship.

It is clear from this description of the constitution that it was unsuited to the democratic ideals of the twentieth century, and when the Great War of 1914 showed the German Empire in its naked state as a powerful military camp moving under the direction of the Hohenzollerns, the whole edifice collapsed like a house of cards. But it must be admitted to the credit of German patriotism that while the other belligerents, Russia, Austria-Hungary, and Turkey were dismembered and could not easily settle down, the German Empire, even in the turmoil of the aftermath of the War, evolved a new Republican Constitution which, depriving the local princes and magnates of their crowns, established a true form of federal and democratic government.

The steps that led to the framing of this constitution were very important. After the entry of the U. S. A. in the War, the tide changed and Germany began to lose on the Western front. The raising of repeated loans in Germany told severely upon the people who began to object to the continuance of a conflict in which they had no hand.

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\* Lowell, 'Governments and Parties in Continental Europe', Vol. 1, p. 246.

The Kaiser, finding that his authority was waning, entrusted Prince Maximilian with the duty of Imperial Chancellorship. This statesman in response to President Wilson's insistence on the condition of a popular government in Germany prior to opening of peace negotiations issued his appeal to citizens, soldiers and workmen. The Revolution of 1918 changed completely the aspect of German internal policy; it led to the abdication of the Kaiser and the dethronement of Princes in the different states, and the advent of the socialist party. The National Constituent Assembly, the members of which had been elected by direct, universal, equal and secret suffrage, met at Weimar on February 6, 1919. In the Assembly the Social Democrats were the most numerous party but their 165 seats out of a total of 421 were not strong enough to command a majority. Therefore they formed a Coalition with Clericals and Democrats. In the actual task of framing a permanent constitution there were two distinct parties; those who wanted to wipe off the states and establish a complete centralization, and those who wished to retain the separate character of the states with the only stipulation of curbing the power of Prussia. After protracted discussions they arrived at a compromise between the two extremist views and a real federal constitution was drawn up which, without being subjected to a referendum, was put in force by executive order on August 11, 1919\*.

This constitution established a bi-cameral legislature in which the lower house is the representative of the German citizens as a whole. The chief executive power is vested in the President who is elected by the votes of the people but he exercises his power with the advice of the Chancellor and the ministers on whom the chief responsibility of administration rests. There is thus a combination of presidential and parliamentary forms of Government. The

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\* Newton, 'Federal and Unified Constitutions,' Introduction, p. 23.  
Graham, 'New Governments of Central Europe,' pp. 25-28.

constitution provides for a legislative centralization with executive decentralization. To meet the demands of the socialists it recognises the importance of the economic and social legislation and provides for the creation of a National Workers' Council whose advice is sought on all labour and social legislative measures.

(iii) *The Austro-Hungarian Empire.*

The political history of the confederation of Austria and Hungary differs from that of other confederations in several essentials. It was early in the Middle Ages that the house of Hapsburgs had established its Empire in the heart of Europe and had annexed the neighbouring countries one after the other. In an earlier part of this chapter it has been shown how, as a result of the policy of the Hapsburgs, certain distant parts of the Empire had broken away from it and established separate leagues and confederations of their own.

Though Austria had frequently been defeated on the field of battle it was her singularly good fortune that she always augmented her territories even after these defeats. In 1526 both Bohemia and Hungary had fallen to Hapsburgs and accepted Austrian supremacy. Moravia, Transylvania, Slavonia and Croatia which had fallen to Hungary at different periods, also passed into Austrian hands along with Hungary in 1526. Galicia was annexed to Austria after the partition of Poland in 1772, while Dalmatia came to her in 1797 through the treaty of Campo Formio. In 1878 the Congress of Berlin took away from Turkish hands Bosnia and Herzegovina and placed them under Austrian protectorate but they were formally annexed in 1908.

These territorial acquisitions of Austria were of a most heterogeneous character with regard to races and languages. This heterogeneity complicated the constitutional history of Austria to a very great extent. There were three important distinct races that formed the population of

these states, the Germans, the Slavs and the Magyars. Again the Slavs differed from Slavs in different provinces by reason of their history, language, and religion. Then there were several other races that lived in different parts of Austria.\* But the Germans formed a third part of the Austrian population and were by far the most compact of all. Slavs were predominant in Bohemia and Moravia ; the Poles in Galicia ; and the Italians along the Adriatic coast. In Hungary there were four races, the Magyars, the Slavs, the Germans, and the Roumanians. But the Magyars, not being Aryans and unable to assimilate the other races, had always stood unitedly, a unity which to them was a great source of cohesion necessary for a minority to rule the destinies of Hungary. As for the languages, two of them, being each other's rivals, need be mentioned. German was predominant in Austria and Magyar in Hungary, and, as shall be presently shown, the rivalry created not a little trouble for the government of the confederation.†

\* The racial distribution of the population of Austria on December 31, 1890, was as follows :—

|                  |               |                  |             |
|------------------|---------------|------------------|-------------|
| Germans          | .. 8,461, 580 | Italians         | .. 675,305. |
| Czechs           | .. 5,472, 871 | Croats and Serbs | .. 644,926. |
| Poles            | .. 3,719, 232 | Roumanians       | .. 269,110. |
| Ruthenians       | .. 3,105, 221 | Others           | .. 430,490. |
| Slovenians       | .. 1,176, 672 |                  |             |
| Total Population |               | .. 23,895,413.   |             |

' Governments and Parties in Continental Europe,' Vol. 11, p. 73.

† The following figures indicate the linguistic population of Austria and Hungary, according to the census of 1910 (The New International Year Book, 1914 Edition, p. 76).

| <i>Austria.</i>            |              | <i>Hungary.</i>              |   |
|----------------------------|--------------|------------------------------|---|
| Language.                  | Speakers.    | Per cent.<br>of<br>speakers. | Speakers.<br>Per cent.<br>of<br>speakers. |
| German                     | .. 9,950,266 | 35.58                        | 1,903,367 10.40                           |
| Magyar                     | .. 10,974    | .04                          | 9,944,627 54.50                           |
| Bohemian slovak & Marairan | 6,486,383    | 23.02                        | 1,946,357 10.70                           |
| Slovak                     | .. ..        | ..                           | .. ..                                     |
| Polish                     | .. 4,967,984 | 17.77                        | .. ..                                     |
| Ruthenian                  | .. 3,518,854 | 12.53                        | 461,270 2.50                              |
| Servian and Croatia        | .. 783,334   | 2.80                         | 656,321 3.60                              |
| Rumanian                   | .. 275,150   | 0.98                         | 2,948,186 16.10                           |
| Slovene                    | .. 1,252,910 | 4.48                         | .. ..                                     |
| Italian and Ladin          | .. 768,422   | 2.75                         | .. ..                                     |
| Others                     | .. 601,062   | 2.13                         | 401,412 2.20                              |

It will serve our purpose to describe the history of the Austro-Hungarian Empire after the overthrow of Napoleon. In this period absolute monarchy was tightening its hold throughout Europe ; "and nowhere were these bonds more successfully strengthened than in Austria-Hungary under the reigning influence of the sinister Metternich.\*

The political convulsions of 1848 broke forth with great fury over this Empire. Hungary tried to loosen the control of Austria and regain her independence, but Russian forces enabled Austria to keep her hold over her rebellious dependency. But in 1866-1867 when Austria was humbled and defeated by Prussia, the Austrian Emperor engaged the services of a foreigner, Baron Beust, who had been for long a minister in Saxony. Hungary was at this time under the guidance of her patriot citizen Francis Deak. On February 8, 1867, a compromise was arrived at between the Emperor, Baron Beust, and Francis Deak. As a result thereof, the laws of 1848 at once became effective in Hungary and Francis Joseph was crowned as King of Hungary at Budapest on June 7, 1867. Austria and Hungary began to be governed separately in all matters save war, finance, and foreign affairs, by their respective parliaments, the same King appearing in the two countries as a constitutional monarch.

The Common affairs of the two countries were administered by three ministries of Foreign Affairs, War, and Finance, all under the same monarch. The parliament of each country annually sent a delegation of sixty representatives to legislate on all common affairs. These delegations met alternately at Budapest and Vienna. All acts had to be passed and agreed to by both delegations separately.† In the case of disagreement any one of them could demand

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\* Woodrow Wilson, 'The State,' p. 425.

† In the Austrian delegation the proceedings were conducted entirely in German, and in the Hungarian delegation only Magyar was spoken.

a joint session which was held at once and in which there was no discussion but only voting, and a simple majority decided the question. For purposes of the joint session the number of members from each delegation had to be the same; in case of an inequality, owing to the absence of some members, the excess of one delegation was reduced, by lot, in order to establish equality. The ministers had to answer interpellations in each delegation and they had to carry out the laws passed by both of them. Most of the legislative business was done by the two parliaments separately in their own countries, and the delegations had to abide by their decisions. So that in this case there was, unlike the German system, a complete Legislative decentralization with Executive centralization. A citizen of one country was also considered to be the citizen of the other, enjoying all privileges of citizenship within it. The two countries could not impose any extra duties on the goods coming from the one into the other, except the ordinary excise imposed on its own goods.

There was a common army and a navy, and the Emperor was the Commander-in-chief.\* The army was organised and conducted according to the laws passed by the two parliaments separately. But each country had its own local militia or reserves as its own institutions.

The joint ministries were appointed by the Emperor whose consent was necessary for the validity of all laws. The common expenditure was met with by incomes derived from two sources, revenues and customs tariffs, and the contributions from the two countries. Hungary contributed

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\* "After the recruits are enlisted they are under the control and in the pay of the joint administration. The Emperor, as commander-in-chief, appoints the officers, and regulates the organisation of the army. The minister of war, curiously enough, is not required to countersign acts of this nature, but he is responsible for all other matters, such as the commissariat, equipment, and military schools." *'Governments and Parties in Continental Europe,'* Vol. II, p. 171.



nearly thirty per cent and Austria about seventy per cent. The duties on goods were realised by the two countries at their own customs houses and by their own officials, and then the money was paid into the common treasury. The tariff, established by the two parliaments, was revised every ten years in the form of a treaty.\* It happened more often than not that at each revision of the treaty Hungary extracted some extra privileges as the price of her consent. There was also a uniform coinage but separate coining ; a uniform system of weights and measures was in vogue.

In 1878 as a result of the Russo-Turkish war Bosnia and Herzegovina were given to Austria as her share of the booty. Much against the wishes of the two parliaments the ministries acquired the territories whose administrative expenses were to be met, as far as possible, from the local revenues, any deficiency being made up by the two delegations. None of the two countries took the sole responsibility of governing these districts for fear of augmenting her own expenditure.

This clearly shows that there was no political cohesion between Austria and Hungary. The union was one between two independent countries who owed allegiance to the same monarch. The racial and linguistic as well as religious differences were far too strong to create any common sympathies. In fact what kept the antipathies and differences below a certain level and enabled the two countries to stick together for such a long period was sheer necessity dictated by a fear of foreign aggression. Austria without Hungary would have fallen an easy prey

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\* "The treaty also establishes a common standard of money, and provides that patents and trade-marks acquired in either country shall be protected in both, that commerce on the high seas shall be governed by uniform laws ; and that the regulations about posts and telegraphs, and about connecting rail-roads, shall be similar. All these matters, which lie at the base of a common nationality, depend in the dual monarchy upon treaties, terminable by either party at the end of the ten years."

'Governments and Parties in Continental Europe,' Vol. 11, pp. 174-175.

to Germany, and Hungary without Austria would have been coerced into annexation by her neighbours, possibly Russia. It was this fear alone which supplied the cementing material and kept the disjointed pieces together. Yet Hungary, though much smaller than Austria, by reason of her compact Magyar population commanded in all common counsels the lion's share in contrast with and much to the discomfiture of Austria whose population was extremely heterogeneous and whose delegation was a house divided against itself. In the Hungarian delegation 55 out of 60 members were always Magyars and they usually won over to their side some one party of the Austrian delegation. It was this specially protected position of Hungary which gave currency to saying that Hungary enjoyed seventy percent of the power for thirty percent of the cost.\*

Strictly speaking the constitution was not an example of a true federal constitution. The inequality of the members, the strange machinery and its curious working, the want of legislative centralisation, coupled with the financial instability, and lastly the fear which lay at the root of any community of interests reduced the possibility of the two countries forming a true federation. Nowhere else in Europe, nay even in the world, could such a system of administration lasting for such a long period be found. Lowell rightly remarked that Austria Hungary (of the pre-war days) was a "museum of political curiosities."

But this anomalous position could not bear the strain of racial pressure if exerted from a foreign source. In fact it was this racial antagonism which, in the Great War, ended the union of Austria and Hungary and split the whole confederation into smaller states founded on racial grounds, thus uniting the Pole with the Pole and the Slav with the Slav, a natural and lasting sequence of common

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\* "Lowell, 'Governments and Parties in Continental Europe,' Vol. 11, page 167.

feelings and common culture. Charles II, the Emperor, had to abdicate to give place to the rising wave of democracy, and the treaty of Versailles, 1918, set its seal upon the dismemberment of his Empire.

(iv) *The United States of America.*

The political history of the United States of America begins with the early colonisation of the country. Several European nationals had begun this colonisation in the latter part of the sixteenth and earlier part of the seventeenth century. The English were among the early colonisers. Persecuted by their King they left their homes for the New World where they hoped to worship their God in their own way. The trader was not late in following these persons. Later on Parliament deported to these colonies convicts who had been sentenced to penal servitude for life or for long periods. The traders formed their companies on the model of the East India Company and obtained charter from their sovereign at home. The colonisers were civilised and their contact with the uncivilised Red Indians was not a happy one. The Indians were either subdued or exterminated or driven westward by the whites. The European population increased day by day. Three kinds of colonies were established, (i) those established by the trading companies under the terms of their charters, later on these charters were revoked one by one and the crown assumed control of the colonies which came to be known 'Crown Colonies'; (ii) the 'Proprietary Colonies' established by rich persons who had obtained special charters for the purpose from the King; and (iii) the 'Charter Colonies' established under charters granted by the King directly to the inhabitants of the new territories who owned some property, these inhabitants were known as free-men.

It is interesting to mention here that though the Spaniards had settled in the South, in Florida, and the French in the North, also a few Dutch and Germans in the centre

along the coast, the English predominated among them all, and soon the struggle for supremacy ended in their victory. The Spaniards were restricted to the South, the French were crushed in the North, and the Dutch and the Germans were outnumbered. So that the colonisation of America became entirely Anglo-Saxon in spirit. The colonisers had brought here with them the ideals and institutions of their mother country and had followed and transplanted them in their new homes.\*

The geographical and ethnological conditions of the whole country were of a varied character†. This led to marked differences in their occupations and social status, which resulted in political isolation‡. The North was mainly manufacturing, the centre produced abundance of Indian corn, while the South was famous for its tobacco crop. It was for these reasons that the southern colonies welcomed slave trade and their population contained a very great proportion of slaves, a fact which exercised considerable influence on the later history of America.

Along with these social distinctions there were religious as well as political differences. Though the Puritans were the first English settlers, they were soon followed by Protestant Dissenters, Roman Catholics and those who belonged

\* "As America became English, English institutions in the colonies became American. They adapted themselves to the new conditions and the new conveniences of political life in separate colonies, colonies struggling at first then expanding, at last triumphing; and without losing their English character gained an American form and flavour." Wilson, 'The State', p. 268.

† "The colonists then inhabited that portion of North America which lies between the thirty-first and the forty-fifth parallels of North Latitude and between the Atlantic Ocean and the Appalachian Mountains." Channing, 'The United States of America', p. 5.

‡ "This great diversity in employments and in conditions of life reacted on the habits and ideas of the people of the several sections and made against political union throughout the whole history of the people inhabiting this country." Ibid. p. 7.

to the Church of England. They all crossed colonial boundaries and intermingled with one another. But the political differences were the chief factor to direct the course of colonial history. In the three classes of colonies enumerated above there were different methods followed with respect to the appointment of the Governor and his council. For example, in the crown colonies the governor was appointed by the King with specific instructions and was given an advisory council also appointed by the same authority ; but in the charter colonies the people elected their own governors and councils. Naturally these two different modes of appointment resulted in executive differences in the colonies. But the remarkable differences were those between the colonies on the one hand and the Parliament and King on the other. These became manifest in the contests between the royal governors who acted under instructions from England and the popular assemblies who voiced the feelings of the colonists. The assemblies legislated on all matters concerning the public weal, and public interest lay at the root of all their resolutions. The Governors, in their turn, tried to direct legislation in conformity with their instructions. In the ensuing struggle the people sided with the assemblies whom they came to look upon as sovereign for all practical purposes.\* In fact, for a long time neither the King nor the Parliament had ever attempted to curtail their powers.

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\* "It was, indeed, as a matter of course rather than as a matter of definite legal right that the powers of the colonial assemblies waxed greater and greater from year to year." Wilson, 'The State,' p. 280.

"The assemblies of the royal colonies, no less than those of the charter governments, early, and as if by an instinct and habit common to the race, developed a consciousness and practice of local sovereignty, which comported well enough, indeed, with a perfect loyalty,—long suffering in respect of Navigation Acts and all like attempts of the mother country to regulate their place in the politics and commerce of the outside world—but which was from the first prompted to resent and resist all dictation as to the strictly interior affairs of the settlements. And the same was true of the proprietary colonies also. Maryland assumed the same privileges that

Perhaps no occasion had arisen to interest the Englishmen at home in colonial legislation. It was this indifference of the British Parliament that indirectly helped the colonists to build up separate legislatures which they regarded as supreme within their territories.\*

But when the increase of public debt after the conclusion of the Seven Years War compelled the British Parliament to search for further sources of revenues, the question of colonial taxation came to the front. No doubt the Acts of Trade enforced by the Parliament did indirectly tax the colonies, but the evasion of these Acts, connived at even by the customs officers, had not told on the colonists' purse. And no sooner the Stamp Act was passed than matters assumed a new aspect and the different colonies, till then having no bond of union amongst themselves, but now confronted by a common invasion on their freedom from Parliamentary taxation, of which they had begun to have sub-consciousness, stood like one man to frustrate this new inroad of the British Parliament. They stood by the maxim 'No taxation without Representation', the first commandment in the Englishman's Political Bible. No arguments on the part of the Parliament, that till then the colonies had not objected to the Acts of Trade which really

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Virginia insisted upon, and even Pennsylvania, with its population compounded of English, Dutch, and Swedes, manifested not a little of the same spirit of independent self-direction." *Ibid.* p. 281.

\* Speaking of the Colonists, in his speech on American conciliation, Burke said that the colonies "had formed within themselves, either by royal instruction or royal charter, assemblies so exceedingly resembling a parliament, in all their forms, functions, and powers, that it was impossible they should not imbibe some opinion of a similar authority..... Therefore as the colonies prospered and increased to a numerous and mighty people, spreading over a very great tract of the globe, it was natural they should attribute to assemblies so respectable in their formal constitution some part of the dignity of the great nation which they represented. No longer tied to bylaws, these assemblies made acts of all sorts and in all cases whatever." Quoted by Wilson, 'The State,' p. 287.

imposed taxes on them, though in a less direct way, or that the big merchants in England who had proprietary and other commercial interests in America, by their own representation in Parliament, also represented the colonists, or that all people even in England were not directly represented in Parliament and yet taxed by it, could, even in the least, swerve them from their firm determination. The successive changes in the British ministries and the repeal of the Stamp Act did not relieve the situation, for, every ministry, and more so the King, insisted on retaining a small tax on tea (1770) by way of upholding the right of Parliament to tax the colonies. The question now hinged solely on the principle of taxation and not on the Parliament's desire to replenish their treasury or the colonists' plea of poverty. Both sides were equally obdurate but perhaps neither foresaw the final consequences. Parliament failed to perceive that the colonists, though un-organised and disunited in other matters, were now knit together on this question and were determined to prove their mettle.

Ultimately an insignificant incident at Boston (1763) precipitated the struggle, and the several states in Congress assembled (4th July 1776) declared their independence and waged war against the King. It is not the object of these pages to indicate how far the blame rested on the two sides or what measures, if taken at the time would, have averted the trouble. Suffice it to say, that the unity among the colonies, which had not been brought about a few years before that time by arousing hatred of the French, had now been achieved by the advent of this common cause. The colonists took to arms. The war lasted with varying fortunes till the 19th of October 1781, when the surrender of Lord Cornwallis brought it to a close. Great Britain recognised the independence of the United States of America, and the treaty of Paris (1783) set its seal upon the terms agreed upon.

During these seven years of struggle a great constitutional change had been effected in American politics. In their Declaration of Independence, July 4, 1776, the colonists gave expression to what they called self-evident truths according to which they held "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness, that to secure these rights governments are instituted among man, deriving their just powers from the consent of the governed; that, whenever any government becomes destructive of these ends it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." And while deprecating all changes of Government 'for light and transient causes,' they held that "when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is the right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient suffering of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states."

In these abuses they included the commission as well as the omission of various acts on the part of King George III, which had forced them to withdraw their allegiance. They charged the King with having tampered with the administration of justice; dissolution of their legislative assemblies much against their own wishes; cutting off of their foreign trade; and "transporting large armies of foreign



mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation." It was for these reasons, and after failing in all constitutional manner of petitioning, as they said, that they "Solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved: and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do."

This Declaration of Independence may fitly be called the preamble to the Articles of Confederation drawn up and assented to by the thirteen states\* on 15th November 1777. By a curious coincidence the number of articles was also thirteen. The second article reserved all sovereignty, freedom and power to the several states, which were not definitely assigned to the United States in Congress assembled. The third article declared that the states entered "into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare". The United States in Congress assembled had the sole right to enter into international affairs, to regulate the uniformity of coins and weights and measures, to take charge of the land and naval forces, to settle all disputes arising between two or more states, to regulate commerce and to establish and regulate post-offices,

\* These thirteen states were :—

New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware; Maryland, Virginia, North Carolina, South Carolina, and Georgia.

and to apportion the common expenditure between the several states. For the conduct of all common affairs a Congress was set up to which each state was to send a number of delegates which was definitely fixed. When the Congress was not in session a committee of states consisting of one delegate of each state was to carry on all affairs that fell within the perview of the United States in Congress assembled. This constitution, though apparently giving large powers to the central government, was in reality a weak document as it deprived the central government of the right to exercise direct authority over the people and did not give it any power of taxation so vital to the conduct of all governmental business. It was declared to be of perpetual existence but it lacked the quality of imparting real power to the central machinery. \* Again the system of government by a committee during the recess was a device which could hardly work well. The real trouble had arisen out of the states' desire to maintain their supremacy and reluctance to create over themselves a strong central government which might tax them and interfere with their internal independence as England had done before. The Congress was merely a body of ambassadors from states. And as Oliver has put it, "With the various legislatures its relations were those of a diplomatist. When it sought to create an army it needed to ask leave, and to accomplish that end was forced to submit to terms not only ignominious but contrary to reason. When a state saw fit to furnish a regiment, it claimed and exercised the right to appoint its officers. Military organisation under such conditions was clearly impossible."† It was only Washington's force of character and commanding personality which had kept the ill clad, ill-fed and ill-supported soldiers of liberty together. If Congress had the necessary strength and authority of a

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\* Beard, 'The Rise of American Civilization,' Vol. 1, pp. 231-235.

† 'The Life of Alexander Hamilton,' p. 102.

central government acting directly upon the people the war would not have dragged on for such a long time. The states had failed to supply their quota of men or money for "in the best of times the states were in arrears on everything; almost on the eve of Yorktown, Washington recorded that hardly one had put one eighth of its quota of men at the service of the Revolution".\*

Indeed the difficulties under which Washington was placed had several times forced him to think of relinquishing his command.

When the indomitable courage of Washington had brought the war to a successful termination, farsighted states-men had realised the necessity of a stronger union between the states, if the liberty they had won was to be secured. As early as the spring of 1783, Washington wrote to Hamilton that there was need of granting general powers to Congress and the latter concurring with these views replied that "the centrifugal force is much stronger than the centripetal force in these states—the seeds of disunion much more numerous than those of Union. I will add that Your Excellency's exertions are essential to accomplish this end as they have been to establish independence".† The economic distress felt after the signing of the peace treaty was indeed very great. This had resulted mainly from the weakness of the Confederation. Debts remained unpaid, protected tariff could not be laid, even soldiers' pensions and bonds had not been paid. In this economic turmoil all foreign creditors, as well as American merchants and soldiers favoured the establishment of a strong central Government which could enforce its decisions, rehabilitate interstate commerce and to which they could look forward for the redress of their grievances.‡

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\* 'The Rise of American Civilization,' Vol. 1 p. 235.

† 'The Life of Alexander Hamilton,' p. 169.

‡ Beard. 'The Rise of American Civilization,' Vol. I, pp. 304-305.

At last in 1786 the state of Virginia issued a call for the holding of a Convention at Annapolis mainly with the object of investing the Confederation with certain powers for regulating the commerce of the states. This Convention met in the same year but without transacting any particular business adjourned after passing certain resolutions which clearly went beyond its scope. They made it clear that the commissioners moved by the sole desire to serve the country had come to the conclusion that a revision of the Articles of Confederation was necessary to make the Confederation strong and fit to discharge the functions of a Central Government.\* The Annapolis resolutions paved the way for further investigation. The Congress accepted the suggestion and called upon the states to elect their delegates to meet in a convention at Philadelphia. All the states responded to the call, the Convention met on the appointed day and after deliberating within closed doors for a considerable time drew up a constitution. It will be of interest to observe here that within the Convention two parties had sprung up, which had diametrically opposite views. One party looked upon the Articles of Confederation as a mere treaty between sovereign states, and the other looked upon them as a constitution of a federation. In the end a compromising spirit helped the delegates to frame a constitution which satisfied a large majority. In this way the Annapolis Convention which had been convened to settle the

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\* Here is an important part of the Annapolis Resolutions which summarises the view of the commissioners. "They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that, to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a corresponding adjustment of other parts of the federal system."

A. P. Newton. 'Federal and Unified Constitutions.' p. 79.

commercial question ultimately solved the wider problem of the future constitution of America.\*

The Convention satisfied the local patriotism of the advocates of states' sovereignty by giving equality of status to all states in the Senate and it allayed their fears by providing for the appointment of the chief executive president, by election by states. And at the same time it satisfied the aspirations of the nationalists by making the House of Representatives truly representative of the citizens as a whole. Section VIII of Article I of the Constitution strictly enumerated the powers of the Congress, leaving the unenumerated and residuary powers to the states themselves, but the Constitution contained a clause which enabled the Congress "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof". And as the Supreme Court was solely vested with the power of interpreting the Constitution, "Under the light shed by the expansive imagination of Chief Justice Marshall that clause became a Pandora's box of wonders."†

It is significant to remark here that the weakness of the Articles of Confederation of 1777, which had resulted from the spirit then prevailing, the spirit which, in the preamble of these Articles, had found its echo in the words "Whereas the delegates of the United States of America, in

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\* Speaking of the importance of the Annapolis resolutions, F. S. Oliver says: "It is notable that the immediate cause of the constitutional compact is to be sought, not in the higher spheres of political necessity, but in the practical needs of business men. Trade necessities and these alone, were the occasion of their meeting and the purpose of their deliberations. By these 'sordid bonds' a loose confederation was in due time lashed together into such a union as the world had never seen," 'Alexander Hamilton,' p. 140.

† Beard, 'The Rise of American Civilization,' Vol. 1. p. 325.

Congress assembled,.....agree to certain articles of Confederation and perpetual Union between the states of New Hampden, Massachusetts Bay, etc., etc.," was now removed by substituting: "We, the people of United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." The change was extremely important as the confederation which was only an alliance between the states was now changed into a national government established by the people of the United States of America as a whole.

In fact the delegates who met at the Convention had accomplished their task in the best way possible. And they had attracted the admiration of such a statesman as Chatham who admiring their work, eulogized their services for their country in these words: "When your lordships look at the paper transmitted to us from America, when you consider their decency, firmness, and wisdom, you cannot but respect their cause and wish to make it your own. For myself, I must declare that in all my reading and observation—and it has been my favourite study—I have read Thucydides and have studied and admired the master statesman of the world—that for solidarity of reasoning, force of sagacity, and wisdom of conclusion under such a complication of difficult circumstances, no nation or body of men can stand in preference to the general Congress at Philadelphia."

(v) *The Dominion of Canada.*

The colony of Canada was founded by the French colonists in the year 1608. Thence forward it was governed

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\* Speech in the House of Lords, quoted by Beard in 'The Rise of American Civilization,' Vol. I, p. 188.

autocratically by the French King as a province of France. The King sent his governor whose policy was always directed from Versailles. The system of administration was purely despotic.\* The population consisted of merchants, agriculturists and priests.

When the Seven Years War broke out in Europe, the English and the French began to fight wherever they lived side by side in the world. In North America too the conflict began, where General Wolfe led the English forces valiantly against the French and lost his life just when his arms had gained victory for his country. Quebec capitulated on September 18, 1759, and Montreal a year later on September 8, 1760. Canada was then placed under the rule of British Military Commanders and continued to be so governed till the treaty of Paris signed on February 10, 1763. The treaty provided that "His Britannic Majesty, on his part, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; he will, in consequence, give the most precise and most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish church, as far as the laws of Great Britain permit."§ The Royal proclamation of October 7, 1763 announced the appointment of a governor who was to be assisted by a council and an assembly. Murray was appointed first governor of the country. In the meanwhile British immigration into the country complicated the

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\* "No representative body possessing any actual or even formal authority was in existence. Public meetings could not be lawfully held without the permission of the Governor; occasionally they were held without such authority. . . . French Civil and Criminal Laws were in force, and the administration of justice was fairly just and efficient. The main constituents of the population were the seignior, the priest, the habitant and the voyageur or merchant." Sir R. L. Borden. 'Canadian Constitutional Studies,' pp. 14-15.

§ Shortt and Doughty, 'Constitutional Documents,' 2nd Ed. pt. I. p. 115.

political problem as the new comers demanded a right to control the administration. The system of administration satisfied neither the French majority nor the British minority. In 1770 the Governor, Carleton, personally went to England and as a result of his efforts Parliament passed the Quebec Act of 1774 which removed most of the grievances and disabilities of the Roman Catholics. But at that time the American Revolution changed the aspect of Canadian politics. The great influx of loyalists from U. S. A., who were politically far more advanced than the Canadians, raised new questions of political rights. When the Revolution subsided, Carleton, who had now been raised to peerage as Baron Dorchester and appointed for a second time as Governor General in 1787, again took up the question and succeeded in getting the Constitutional Act (Canada Act) of 1791 passed. The country was divided into Lower Canada and Upper Canada, each under a separate administration with a nominated and hereditary Council and an elected Assembly. But the governor was made virtually independent of the control of the Legislature by the grant of Crown revenues and military grants. Thus the executive was made independent and irresponsible, which was a wrong lesson learnt from the American Revolution. But the grant of representative government without any responsibility resulted in an unavoidable discontent. The policy was entirely dictated by the Colonial Office lying thousands of miles away and little acquainted with the real situation.\*

In Lower Canada the struggle raged between the French and the English. In the Council the English pre-

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\* "In no inconsiderable measure the administration was carried on under the immediate direction of the Colonial Office, a bureaucracy not familiar at first hand with conditions in the Colony and often unsympathetic with the aspirations of its inhabitants could hardly avoid narrow views and mischievous policies. The permanent Official who directs from a distance requires rare qualities of sympathy, vision, and imagination."

Sir R. L. Borden, 'Canadian Constitutional Studies,' p. 22.



dominated and in the Assembly the French. The result was that the Assembly refused to grant the Civil List and raised the cry of 'grievances before supply'. This often created deadlocks between the representative Assembly and the irresponsible Executive. The French *versus* English controversy assumed unmanageable proportions in Lower Canada, and Papineau, the leader of the French, who had often been elected Speaker of the Assembly, rose into revolt and an appeal was made to arms. The rebellion was suppressed and Papineau fled, but the smouldering embers of discontent were not finally extinguished. In Upper Canada too there was discontent and the British majority clamoured for popular control over the administration. The constitution of Canada was suspended and Lord Durham was entrusted with his memorable mission.

Within two years (1837-1839) of his rule in Canada Lord Durham studied the situation, analysed the problem, and finally prepared for submission to Her Majesty his celebrated report which is a landmark in the British Colonial History, and perhaps more. He reported that the militia was completely disorganised, the course of justice was obstructed by racial animosity \*; the governor was representative of the Crown only in name but was directed by the Colonial Office; there was no regular police; no facilities for education †; the executive was absolutely

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\* "The course of justice is entirely obstructed by the same cause; a just decision in any political case is not to be relied upon: even the judicial bench is, in the opinion of both races, divided into two hostile sections of French and English, from neither of whom is justice expected by the mass of the hostile party." Lord Durham, Report with an Introduction by Sir C. P. Lucas. Vol. II, pp. 53-54.

Here Lord Durham has cited the case of Chartrand whose murderers were acquitted by French jurors.

For case of Chartrand, Christie. Vol. IV pp. 474-5.

† Speaking of the neglect of education by the British Government in Canada, Lord Durham observes; "I am grieved to be obliged to remark that the British Government has, since its possession of this Province, done

irresponsible\*, and this last defect had alone given to the popular leaders a chance to hurl criticism on the Government in the most irresponsible way.† Therefore, while admitting that inexperience might lead to a few mistakes here and a few mistakes there, he pleaded for grant of responsibility to the

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or even attempted, nothing for the promotion of general education. Indeed the only matter in which it has appeared in connection with the subject, is by no means creditable to it. For it has applied the Jesuit estates, part of the property destined for purposes of education, to supply a species of fund for secret service : and for a number of years it has maintained an obstinate struggle with the Assembly in order to continue this misappropriation." Durham's Report, vol. II, p. 136.

\* "It was upon this question of the responsibility of the Executive Council that the great struggle has for a long time been carried on between the official party and the reformers ; for the official party, like all parties long in power was naturally unwilling to submit itself to any such responsibility as would abridge its tenure, or cramp its exercise of authority. Reluctant to acknowledge any responsibility to the people of the Colony, this party appears to have paid a somewhat refractory and nominal submission to the Imperial Government relying in fact on securing a virtual independence by this nominal submission to the distant authority of the Colonial Department, or to the powers of a Governor, over whose policy they were certain, by their facilities of access, to obtain a paramount influence." Ibid. p. 151.

He has also remarked that the legislature did not enjoy the confidence of the electors. Ibid. p. 161.

† "It was an unhappy consequence of the system which I have been describing, that it relieved the popular leaders of all the responsibilities of opposition. A member of opposition in this country acts and speaks with the contingency of becoming a minister constantly before his eyes, and he feels, therefore, the necessity of proposing no course, and of asserting no principles, on which he would not be prepared to conduct the Government, if he were immediately offered it. But the colonial demagogue bids high for popularity without the fear of future exposure. Hopelessly excluded from power he expresses the wildest opinions, and appeals to the most mischievous passions of the people, without any apprehension of having his sincerity or prudence hereafter tested, by being placed in a position to carry his view into effect ; and thus the prominent places in the ranks of opposition are occupied for the most part by men of strong passions, and

colonists,\* which he thought, would result in a better understanding between the English and the French and would create new opportunities for progress.†

Lord Durham, in submitting his report to Her Majesty, recommended an early enactment so that the wrongs be righted before it was too late. Acting upon his advice Parliament passed an Act for uniting Lower and Upper Canada (23rd July 1840). By this Act the two provinces were united and a legislature, consisting of a Council and an Assembly, was established. A governor of the provinces of Canada was appointed who was authorised to appoint his deputy or deputies to assist him in the administration. Responsibility was granted on the usual lines and the governor was to exercise the powers which were necessary for guiding the colonists along the prescribed lines.

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merely declamatory powers, who think out little of reforming the abuses which serve them as topics for exciting discontent," Durham. Report, Vol. II, pp. 81-82.

\* "The colonists may not always know what laws are best for them, or which of their countrymen are the fittest for conducting their affairs; but at least, they have a greater interest in coming to a right judgment on these points, and will take greater pains to do so than those whose welfare is very remotely and slightly affected by the good or bad legislation of these portions of the Empire. If the colonists make bad laws, and select improper persons to conduct their affairs, they will generally be the only, always the greatest, sufferers, and, like the people of other countries, they must bear the ills which they bring on themselves, until they chose to apply the remedy. But it surely cannot be the duty or the interest of Great Britain to keep a most expensive military possession of these colonies, in order that a Governor or Secretary of State may be able to confer colonial appointments on one rather than another set of persons in the Colonies." Ibid, pp. 282-283.

‡ Lord John Russell, opposing the grant of responsibility to the Executive Council of Lower Canada, spoke:--

"That part of the constitution which requires that the ministers of the Crown shall be responsible to Parliament and shall be removable if they do not obtain the confidence of Parliament, is a condition which exists in an Imperial legislature and in an Imperial legislature only. It is a condition which cannot be carried into effect in a colony, it is a condition which can

This system failed to satisfy the colonists who began to feel the great necessity of a federal form of union between all the colonies in North America. The need of communications between the different parts of the vast country and the expansion of agriculture to the western parts brought the colonists closer together. Consequently delegates from all the principal colonies including Nova Scotia, New Brunswick, Prince Edward Island, met at Quebec. The difficulties in their path were manifold, linguistic, religious, and economic. But after prolonged discussions they passed the famous Quebec Resolutions which embodied the terms on which they were prepared to federate.

The representatives of the colonies, including the premiers, went over to England and discussed the plan of the resolutions with Her Majesty's ministers. After fruitful discussions an Act of Parliament (29th March 1867) was

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only exist in one place, namely the seat of the Empire." Quoted by Sir C. P. Lucas. *Ibid.* Vol. 1. p. 143.

Cornwall Lewis, writing in 1841 took the same view. He stated :— "If the government of the dominant country substantially govern the dependency, the representative body cannot substantially govern it ; and conversely, if the dependency be substantially governed by the representative body, it cannot be substantially governed by the Government of the dominant country. A self-governing dependency (supposing the dependency not to be virtually independent) is a contradiction in terms." 'Government of Dependencies' 1891 Ed. ch. X, p.;289.

But Lord Durham unequivocally maintained :—"I know that it has been urged, that the principles which are productive of harmony and good government in the mother country, are by no means applicable to a colonial dependency. It is said that it is unnecessary that the administration of a colony should be carried on by persons nominated without any reference to the wishes of its people ; that they have to carry into effect the policy, not of that people, but of the authorities at home ; and that a colony which should name all its own administrative functionaries would, in fact, cease to be dependent. I admit that the system which I propose would, in fact, place the internal government of the colony in the hands of the colonists themselves ; and that we should then leave to them the execution of the laws, of which we have long entrusted the making to them."

Report, vol. II. pp. 280-281.

passed which conferred upon the colonists a federal form of government which was, in fact, more responsible in nature than what was recommended by Lord Durham. He had advocated only a legislative union for, in his opinion, the time for federation had passed away, and he had expected a solution of the problem only in a union which was to give the British element of the Canadian population sufficient power to control the administration. The Act of 1867 marked a distinct departure in the colonial policy of Britain and showed that the lesson of the American Revolution had not been lost in the counsels of the British Cabinet. It also indicated that even while owing common allegiance to their British Sovereign the colonies could evolve a system of Government which would satisfy their aspirations. It was this lesson of the Canadian federation which placed before the other parts of the British Empire an example which was soon followed with great vantage.

(vi) *The Commonwealth of Australia.*

The continent island of Australia is now an entirely colonised country. After the discovery of this Island by Captain Cook the colonisation began in 1788 when New South Wales was colonised. The prospect of gold and silver mines in the continent island attracted a large number of immigrants who settled along the coast. At first the whole continent was under one central administration at Sydney, but the increase of population necessitated the separation of Tasmania, then known as Van Diemen's Land. This example was soon followed by Western Australia, South Australia, and lastly Queensland (1859).

In 1850 an Act of Parliament separated Victoria from the mother colony of New South Wales. In 1848 Earl Grey, while giving his assent to the proposal which resulted in the passing of this Act, spoke most prophetic words which, though their importance was not understood at that time, bore fruit half a century later. He said: "It is

necessary while providing for local management for local interests, we should not omit to provide for the central management of all interests not local. Questions having a bearing on the interests of the Empire may be left appropriately to the Imperial Parliament; but there are questions which, though local in Australia collectively, are not merely local in relation to one colony, though each may have part in a common interest, and in regard to which it may be essential to the welfare of all to have a single authority, and they may more appropriately and effectually be decided by a single authority in Australia than by the more remote, less accessible, and in truth, less competent authority of Parliament.”\* And the continent is now a true federation comprising seven different colonies.†

It was Sir Henry Parkes, the leader of the free trade party of New South Wales, who, encouraged by the formation of the Dominion of Canada in 1867, for the first time seriously took up the cause of Australian federation. At that time several other events helped him in pushing forward this cause. Among them were (1) the occupation of New Guinea by Germany, (ii) the escape of convicts into Australia from the French penal settlement in New

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\* A. B. Keith, ‘Speeches and Documents on Colonial Policy,’ vol. I. pp. 339-340.

† The total area of the Commonwealth of Australia is 2,974,581 sq. miles, distributed as follows :—

|                               |            |            |
|-------------------------------|------------|------------|
| Victoria                      | .. 87,884  | sq. miles, |
| New South Wales               | .. 309,432 | ..         |
| Queensland                    | .. 670,500 | ..         |
| South Australia               | .. 380,070 | ..         |
| West Australia                | .. 975,920 | ..         |
| Tasmania                      | .. 26,215  | ..         |
| Northern Territory            | .. 523,620 | ..         |
| Federal capital and territory | .. 940     | ..         |

The total population according to the census of April 4, 1921 is 5,435,734, and as estimated on March 31, 1928, it is 6,262,720.

(Statesman's Year Book, 1929, p. 347).

Calendonia, and (iii) the intention of France to appropriate the New Hebrides group of islands.\* These events aroused intense enthusiasm for some kind of union between the colonies. Accordingly in 1883 Parliament passed 'The Federal Council of Australasia Act 1885'. This Act established in Australia a Federal Council whose powers were defined.† But neither New South Wales nor South Australia sent any delegates to this Council and therefore it could not achieve any substantial results. The defects of the Federal Council were clear. It was not elected but appointed by the various colonial governments and was consequently a weak body depending for its strength on the support of its creators. It could neither raise nor control the army. It could legislate but was not empowered to execute. It had no power of taxation, and lastly, it was not necessary that all colonies must remain within its jurisdiction, although they were free to join it or even to withdraw from it.§

On October 9, 1889, appeared the report of Major General Bevan Edwards who had been deputed by the Imperial Government to inspect the defences of Australia. He recommended organization of the military forces of the several colonies under one command as an Australian army.

\* James Bryce 'Constitutions,' p. 274.

† The Federal Council had legislative powers over ;

- i. The relation of Australia with the islands of the Pacific.
- ii. The prevention of the influx of criminals.
- iii. Fisheries in Australian waters beyond territorial limits.
- iv. The service of process.
- v. The enforcement of judgements beyond the limits of a colony. It had also derivative legislative power over defence, quarantine, patent law, copyright, bills of exchange, marriage and divorce, naturalisation, and other matters which any two or more colonies might agree to refer to it.

§ Bryce. 'Constitutions,' p. 275.

Keith. 'Speeches and Documents on Colonial Policy, p. 341 (The speech of Chamberlain).

Backed by these recommendations, Sir Henry Parkes made another attempt and on October 15, 1889 he sent a circular telegram to all the premiers\* laying stress on (i) the need for general military organization, (ii) relaxation of tariff barriers, and (iii) uniformity of legislation on some points, and requested them for federating the colonies. An inter-colonial conference of ministers met at Melbourne, which was followed by the Convention of Sydney (1891). The Convention prepared a draft of the Commonwealth Bill, but owing to lack of sufficient popular support nothing more substantial could be achieved. The federal leaders realised the necessity of educating the people on the point. Accordingly they established a federal League and toured the whole country carrying on intensive propaganda in support of the federal cause. The opponents with equal intensity counteracted this propaganda and warned the people against the danger of a federation.† The financial crisis of 1893 gave further impetus to the federal cause and a conference of the premiers met at Hobart (1897) to discuss the situation, but it missed the presence of the originator of the idea, Sir Henry Parkes, who had died working for the movement upto the last.‡ In accordance with its recommendations

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\* It will be of interest to mention here that since the time Sir Henry Parkes started this campaign in favour of the federal cause he always received an unfavourable reply from Mr. Duncan Gillies, premier of Victoria, the latter always insisting on the former's first joining the Federal Council as a necessary step towards federation, but Parkes every time opposed the idea.

† Speaking of the tactics of the opponents of Australian federation Bryce says: "They fanned the jealousies which naturally exist between small and large communities, telling the former that they would be overborne in voting, and the latter that they would suffer in purse: and they wound up with the usual and often legitimate appeals to local sentiment," 'Constitutions,' p. 280.

‡ "On April 22 (1896) he died, embittered by poverty and disappointment but with courage unshaken, and proudly conscious that his fame rested upon a surer foundation than popular caprice."

B. R. Wise. 'The Making of the Australian Commonwealth' 1890-1900. p. 216.



several colonial parliaments passed enabling Acts for choosing delegates, by popular votes, to meet in a convention. In 1897 the Convention of these delegates met at Adelaide and drew up a draft constitution based on that of 1891. It was decided to put it to referendum in all the colonies. Unhappily the popular vote in New South Wales on June 3, 1898, did not bring in 80,000 votes in support of the constitution, a number fixed up by the Convention as the minimum necessary for the purpose. But one significant feature of the referendum was that in all colonies it had secured for the measure a clear majority.\* Another mighty effort was made to win the necessary support. Mr. Reid of New South Wales, who had all along been opposing the idea of federation, proposed certain amendments as a condition necessary for his support. The Conference of Premiers at Melbourne (January 21, 1899) accepted most of these amendments and a second referendum was decided upon. This referendum of June 10, 1899, secured in New South Wales a majority of 24,679, the voting being 107,420 for and 82,741 against the measure. Other colonies recorded even larger majorities. §

With the joining of Queensland on September 2, 1899, and of Western Australia on July 31, 1900, there was secured practical unanimity among the colonies and the

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\* The voting was as given in the subjoined table :

|                        |    | New<br>South<br>Wales. | Victoria. | South<br>Australia. | Tasmania. | Total.  |
|------------------------|----|------------------------|-----------|---------------------|-----------|---------|
| For                    | .. | 71,965                 | 100,520   | 35,800              | 11,706    | 219,991 |
| Against                | .. | 66,228                 | 22,699    | 17,320              | 2,716     | 108,963 |
| Majority for the bill, |    | 5,737                  | 78,421    | 18,480              | 8,990     | 111,628 |

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B. R. Wisc, 'The Making of the Australian Commonwealth', p. 282.

§ *Ibid.* p. 323.

time was ripe for seeing the fruition of the movement after the bitter struggle lasting well over a decade. Representatives of the colonies went to England and prevailed upon the British Cabinet to accept their draft constitution almost in toto. Mr. Chamberlain introduced the motion for acceptance of the constitution in the House of Commons, and, while commending it to the approval of the House, he paid a glowing tribute to the memory of Sir Henry Parkes\* whose ceaseless efforts had borne fruit after his death. Parliament finally passed with very little change the measure, which became the 'Act of Parliament establishing the Commonwealth of Australia, 9 July, 1900.' The passing of this Act demonstrated to the world the value of partnership in the Empire.

(vii) *The Union of South Africa.*

The Dutch were the first to colonise South Africa. The English, who had to round the Cape of Good Hope on their way to India, felt the necessity of having some settlements at the Cape and therefore they settled there. But the discovery of gold and diamond mines in the interior encouraged the influx of the colonists into the central parts of the country. Even then their number did not increase very much on account of the nature and climate of the country. The wars between Holland and England resulted in the passing of the Dutch colonies in South Africa into English hands.

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\* "And among those who laboured in this movement I think it would be ungrateful not to mention the name of Sir Henry Parkes. Sir Henry Parkes was certainly a most remarkable individuality, he had his peculiarities as most of us have, but no one would deny that he was a man of great capacity, of great power of work, of great resource, and of intense local patriotism; and I think today, when the consummation of the work for which he laboured so long is clearly within sight, we may well bear his memory in respectful regard."

A. B. Keith. 'Speeches and Documents on Colonial Policy,' vol. I, pp. 340-341.

These and the other English colonies there continued to be governed by their separate governments, as crown colonies. But the general change in British Colonial policy later affected the administration of these colonies to which self-government was subsequently granted.

The need of union then began to be felt as neither there were any physical barriers between the several colonies nor was there any difference of economic interests. In June 1871 the Cape House of Assembly passed a resolution appointing a Commission to draw up a plan of dividing the whole of British South Africa into a number of provinces and to establish over them a federal government.\*

This step encouraged the movement for federation. In 1871 the British Parliament passed a permissive Act. The Earl of Carnarvon, while explaining its object, thus spoke in the House of Lords, ".....The Bill before your Lordships is one of outline and principle. It is one containing the framework of a future confederation, but leaving the details to be filled up after free communications between the Imperial and Local Governments. It is essentially permissible—one by which no sort of pressure would be put on the Colonies, while it will at the same time give them every opportunity of confederating, if they should think it advisable to do so....."† Section 5 of this Act provided for the division of the whole colony into such provinces as might be found necessary. Sections 18 and 19 laid down the principles for the representation of these provinces in the Upper and Lower Houses of the Legislature. Section 33 enumerated the powers of the United Parliament

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\* ".....And as it may be expedient that the Colony should be divided into three or more Provincial Governments for the management of their own domestic affairs, formed into a Federative Union under a general Government for the management of affairs affecting the interests and relations of the United Colony....." etc.

Newton, 'The Unification of South Africa,' vol. 1, p. 12.

† Ibid p. 45.

giving it the residuary powers also. But the Act could not be put into operation for five years and, as provided in it, it automatically lapsed.

In 1884 the formation of the Affrikander National Party with the object of uniting all European Nationals under one Union Government further encouraged the movement for federation. Two years later the Cape House of Assembly discussed the possibility of a Customs and Railway Union but it did not assume any practical aspect till 1903 when a Customs Union Conference of the colonies was held. In the Conference Sir Albert Hime (Premier of Natal) moved and Mr. Duncan (Premier of Transvaal) seconded the resolution "That all the Colonies represented are in favour of the establishment of a Customs Union based on a common tariff, and would welcome the adhesion to such a Union of the Provinces of Mozambique."<sup>\*</sup> The Conference also discussed the Railway Rates question and appointed a committee to report thereon. The National question also came up before them. This was followed by the issuing of an Order in Council by the British Government creating an Inter-Colonial Council in South Africa (20th May 1903). Three years later, the governors and administrators of these colonies met in a Customs Convention which, while admitting the right of each colony to collect customs duties on goods imported for consumption in it resolved to establish a Customs Union between the colonies and drew up the Articles of Union. † Till then the projects for Union had proceeded from the Colonial Governments or from the governors, but in June 1907 Earl of Selbourne, High Commissioner in South Africa, in his letter to the Cape Governor, expressed his conviction that the federal movement, in order to be successful, must proceed from the people of South Africa themselves.‡ He prepared a

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<sup>\*</sup> Newton. 'The Unification of South, Africa.' Vol. I. p. 213.

† Ibid. vol. II, pp. 25-32

‡ Ibid. vol. II. p. 41.

memorandum in which he expressed the opinion that "The union of a divided country is seldom a thing which can be postponed to a more convenient season. Divisions left alone tend to emphasise and perpetuate themselves day by day until really firm union becomes impossible." In May 1908 the Inter Colonial Conference \* was convened for the chief purpose of discussing the Tariff and Railway Rates, at Pretoria. But, like the Annapolis Conference of U. S. A., it came to the conclusion "That in the opinion of this Conference, the best interests and the permanent prosperity of South Africa can only be secured by an early union, under the Crown of Great Britain, of the several self governing Colonies." † In another resolution it resolved that a Convention of delegates from each colony be convened to prepare a draft constitution. In response to these resolutions the National Convention of delegates from each colony, elected by their respective legislatures, met at Durban, Cape Town and then at Blomfontein from 12th October to 11th May 1909. In its various secret sittings it debated the question of establishing a federal Union. The difficulties before them were many. There were two distinct European races, the English and the Dutch, inhabiting the different colonies and speaking two different languages. Then the economic interests of the colonies were not all alike. Transvaal with its industrial centre at Johannesburg was in favour of free trade, while the colonies along the coasts were in favour of protection and customs duties on which their income depended. There was the question of Railways which had till then belonged to the different provinces and on whose income the Colonial Governments depended largely, and they were reluctant to lose the main source of their income into the hands of a central government. The coast colonies had ports while those

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\* Ibid. pp. 169-170.

† Ibid. p. 217.

inside the country had none. And lastly there was the Native question. In South Africa the native population far out-numbered the European population, being 5 to 1,\* and the different colonies at that time—and even today—pursued different policies toward the natives and they were unwilling to give them up for a common policy.

But the evils of disunion were patent and they had been very well indicated in the racial war that had recently concluded, showing that union was very essential.† Mr. R. H. Brand has thus summarised the position: “disunion not only brought with it many dangers. It meant also that Government was inefficient, cumbrous and expensive. Four separate systems were needed for the control of one million white inhabitants. There were four parliaments handling identical problems by means of differing laws; there were four courts interpreting these laws in diverse manners; there were four Governors with their accompaniment of Government Houses, and staffs; there were four Governments, driven in every sphere of their activity to recognize the necessity of unity and promptitude of action and yet failing to achieve either; there were four treasuries, each borrowing money without regard to the needs of the others; there were confusing differences in many of the laws, especially in such matters as patents, marriages, inheritance, and naturalization. A man might be a British subject in the Cape Town but not

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\* The population of South Africa, according to the Census of 1921 is,

|           |    |    |            |
|-----------|----|----|------------|
| Bantus    | .. | .. | 4,697,813. |
| Europeans | .. | .. | 1,519,488  |
| Asiatics  | .. | .. | 165,731    |
| Others    | .. | .. | 145,548.   |

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|                  |    |    |           |
|------------------|----|----|-----------|
| Total population | .. | .. | 6,928,580 |
|------------------|----|----|-----------|

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The Stateman's Year Book, 1929 p 226

† “It is therefore no paradox to assert that out of War has come harmony.” Brand. ‘The Union of South Africa’ p 9.

in the Transvaal. Taken alone, all these elements of waste and confusion were a potent argument for Union." \*

But the Convention met with the firm determination to solve the problem and succeeded in composing the differences, in sweeping away the existing provincial Governments, and in setting above all a strong central government with vast powers, reserving to the provinces only subordinate powers of legislation. The constitution so drafted was the result of a compromise the signs of which it bore on many essentials. Pretoria was fixed the seat of the Executive and Cape Town that of the Legislature. Though the Union was legislative in spirit, in several aspects it bore signs of a federation. In the upper as well as lower house of the legislature representation was by provinces. Both Dutch and English were officially recognised languages. In Native policy and franchise each province was left to itself. The Convention met the objections of Natal by accepting several amendments.

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\* R. H. Brand. 'The Union of South Africa,' p. 30.

# CHAPTER III

## GROWTH OF FEDERALISM

### INTRODUCTORY.

The history of federal governments as described in the preceding chapter makes it abundantly clear that different countries, in different ages of history, adopted federal forms of government for different reasons. They had various problems of their own to solve and the necessity for the application of federalism to a solution of those problems was the outcome of their circumstances. In each country the factors that enabled federal polity to take root in it were all its own and were not necessarily common to any other country. It is, therefore, clear that there is no particular set of circumstances alone which helps the growth of federalism. In fact there are many. And this Chapter is an attempt to investigate the various factors that have contributed to the growth of federalism. It also deals with the nature of federalism and the future of federalism.

#### *( A ) Factors that have contributed to the Growth of Federalism.*

Problems in political science, unlike those in physical science, do not follow any fixed rules and laws. It is for this reason that political writers and philosophers hold differing views on the same point. Yet, mathematical exactitude apart, there are certain principles and lines of action in political growth which fairly accurately apply to the



solution of certain political problems. Keeping this point in view we begin our present investigation of the factors that have either (i) by helping its formation, or, (ii) by hindering its disintegration, contributed to the growth of federalism.

(a) *Geographical Contiguity of the Country.*

Federalism is, in its essence, a close co operation or union between political states. Necessarily, therefore, the first thing which helps union or contributes to the growth of sympathies between political states is neighbourhood. Nearness of existence finds its counterpart in the creation of a certain imperceptible, yet by no means inappreciable, bond of union which does not, generally speaking, exist between two nations living at a great distance from one another. This has very well been observed in the formation of federations. From the most ancient times right upto the present day political union of a federal character has been successful only between states whose boundaries touch each other. In ancient Greece we find only those city-states forming unions which lay close to each other.

During the Middle Ages the Hanseatic League was formed between cities which were situated widely apart. But distance, later, led to the loosening of the bonds of union and ultimately to the breaking up of the League.

It was the influence of neighbourhood that enabled the British Colonies in North America to federate together in 1867. It is their contiguity which has kept the several cantons of Switzerland together as one nation despite several other disintegrating factors. Hamilton had foreshadowed the dangers of the thirteen states, lying in close proximity to each other, remaining as separate and independent states, and his warning did not go unheeded. The thirteen States of America united and spread towards the west over a vast neighbouring area.

The fathers of Australian Commonwealth had longed for the inclusion of New Zealand in the Australian Federation, but the sea more than counterbalanced the aggregating tendencies and their pious hopes have not been fulfilled even upto the present day. And for the same reason New Foundland did not join the Dominion of Canada. Again the idea of establishing federal union between the various members of the so-called Commonwealth of British nations has not gone beyond the sphere of academic discussion mainly, among other reasons, on account of the long long distances that separate these nations. The ocean has proved too formidable to allow federal ties to grow stronger, although other aggregating tendencies favour a federal union. On the other hand, the various provinces of South Africa united in 1900 as the geographical contiguity of the country proved more powerful than racial animosities and other strifes.\*

Hamilton had expressed similar sentiments regarding the United States of America. He said, "It has often given me pleasure to observe, that independent America was not composed of detached and distant territories, but one connected, fertile, wide-spreading country was the portion of our western sons of liberty. Providence has in a particular manner blessed it with a variety of soils and productions, and watered it with innumerable streams, for the delight and accommodation of its inhabitants. A succession of navigable waters forms a kind of chain round its borders, as if to bind it together; while the most noble rivers in the world, running at convenient distances,

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\* Speaking of this physical feature of South Africa R. H. Pland says

"In no country is the growth of a common nationality more certain, and the creation of one controlling government more imperative. The country, vast as it is in area, is destined by nature to be one. Its physical features are uniform, and there are no natural barriers between one part and another. The population forms, and in reality formed even before the war, one body politic" *Union of South Africa* 'pp 89

present them with highways for the easy communication of friendly aids, and the mutual transportation and exchange of their various commodities.”\*

We conclude, therefore, that physical neighbourhood and contiguity of the country have always been the most important, even an essential, factor in the formation of federations.

(b) *The Problem of Defence.*

And yet neighbourhood alone would not always induce two states to federate if the necessity be not dictated by several other factors among which the problem of defence occupies a very prominent place. For quite a long time the Australian colonies had kept on well under their separate independent governments without thinking of closer union. It was the menace of foreign powers who threatened the peace of the Pacific, that hastened the necessity for federal union. Viscount Bryce remarks: “However after 1883 the general scramble among the great European Powers for unoccupied territories all over the world began, when it extended to the Western Pacific, to bring external affairs to the minds of the Australians, who felt that their interest in the islands, especially New Guinea and the New Hebrides, which lie north and north-east of them, could be more effectively pressed if the whole people spoke through one authority. This helped to revive the project, often previously discussed, of creating a federation of all the Australian colonies, a scheme naturally indicated by commercial and fiscal considerations but retarded by the jealous care with which each community sought to guard its local independence.”† The Federal Council established in 1885 was the first attempt to unite but the Council did not possess the powers to raise a national army for the defence

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\* The Federalist, No. II.

† ‘Modern Democracies’, vol. II, p. 138.

of the whole continent island. The report of Major General Beyans, published in 1889, emphasized the need of a closer union between the colonies for purposes of their common defence.

The same need of common defence had brought into existence the Lombard League and to some extent the Hanseatic League. The Swiss cantons would have remained under their separate governments if the aggressive designs of the Hapsburgs had not goaded them into uniting, if not for other purposes, primarily for self-defence. In the pre-War (1914) Austro-Hungarian Confederation one of the three common subjects of the joint administration was the Army and Foreign Affairs. In the United States of America Jay devoted not a little space in his papers to the importance of self-defence against the imperialistic attitude of European nations. He wrote: "If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organised and disciplined, our resources and finances discreetly managed, our credit reestablished, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If on the other hand, they find us either destitute of an effectual government (each state doing right or wrong as to its rulers may seem convenient), or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes. How liable would she become not only to their contempt, but to their outrage; and how soon would dear bought experience proclaim that when a people or family so divide, it never fails to be against themselves."\*

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\*Federalist, No. IV. Jay has dealt with this subject in detail in Federalist, No. 111.

In ancient days the members of the Achaean League and the Amphictyonic League had kept closer together for, among other reasons, defending themselves against the attacks of their adversaries. The Confederacy of the Netherlands was formed with the primary object of opposing the attack of the Spanish King on their liberties.\* We thus find that the presence of common danger by showing the need for common defensive measure has effectively influenced the moulding of the character of political societies and directly helped the cause of federalism.

(c) *Economic Factors.*

If neighbourhood and defence have effected union between different political groups the temptation of material gains has, in no less degree, kept them closer together. The member-towns of the Hanseatic League formed themselves into a union for commercial purposes, to monopolise the trade of the North Sea and the Baltic Sea. In this case commercial gain was the chief unifying factor. And so upon the formation of the East India Company and the spread of Protestantism, which reduced the demand for dry herring, their trade suffered and this contributed to the breaking up of the League. The advantages of a common tariff, internal trade, fisheries and foreign trade went a great way in federating the States of America in 1787.† Hamilton, discussing the commercial advantages of union wrote: "There are rights of great moment to the trade of America which are rights of the Union—I allude to the fisheries, to the navigation of the Western lakes, and to that of the Mississippi. The dissolution of the Confederacy would give room for delicate questions concerning the future existence of these rights; which the interest of more powerful partners would hardly fail to solve to our disadvantage."‡

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\* The first three Articles of the Act of Union of the United Provinces of the Netherlands, dated January 23rd, 1579.

† Federalist, No. XI.

Discussing the advantages of union he says ; " The veins of commerce in every part will be replenished, and will acquire additional motion and vigour from a free circulation of the commodities of every part. Commercial enterprise will have much greater scope, from the diversity in the productions of different states."\*

In Canada, too, New Brunswick, Nova Scotia and Prince Edward Island joined the Dominion of Canada as they saw in that union great advantages to their commerce in the creation of greater and better communications, railways and lakes, seaports and mercantile marine.† The union of Upper and Lower Canada opened the prospect of a better arrangement of customs and tariffs.‡ While the fathers of the Australian Commonwealth were putting their heads together for evolving a constitution to unite the independent colonies, economic factors were playing an important part in determining the views of the public. In fact the first referendum taken in New South Wales did not favour a federal union simply because the people of that colony were afraid that the union might result in the adoption of protection. Sir Henry Parkes, the leader of the Free Trade Party of New South Wales, had been severely criticised for trying

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\* *Federalist*, No. XI.

† In as much as the provinces of Canada, Nova Scotia, and New Brunswick have joined in a declaration that the construction of the Inter-colonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick and have consequently agreed that Provision should be made for its immediate Construction by the Government of Canada; therefore, in order to give effect to that Agreement, it shall be the duty of the Government and Parliament of Canada to provide for the Commencement within six months after the Union, of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practicable Speed."

British North America Act, Section 145.

Also Lucas' Introduction to Durham's Report, vol. I, pp. 201-5.

‡ Durham's Report, vol II, pp. 308-309, and pp. 313-319.

to form an alliance with the protectionists of Victoria.\* These views, though they ultimately proved erroneous, delayed the formation of the Australian federation, because at that time the two commercial principles—Protection and Free Trade—were being intensively espoused, by their respective followers who saw in the union some imaginary dangers. And yet it was the commercial gain which, together with other advantages, was held out as an olive branch to catch the necessary number of votes to create due sanction behind the demand for federation. In the Act itself provision had been made for adjustment of financial questions for a number of years till all the colonies came to occupy the same position. The whole of Chapter IV of the Constitution of Australia is devoted to this question. A few articles very well illustrate the settlement ;

“Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth. †

“On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.” ‡

“The Commonwealth shall not by any law or regulation of trade or commerce, abridge the right of a State or the residents therein to the reasonable use of the waters of

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\*Mr. David Buchanan, a barrister and a member of N S W. Assembly, wrote in the ‘Sydney Morning Herald’ of January 21, 1889, ‘Sir Henry Parkes sees that if he maintain his Free Trade Principles as a condition precedent to Federation Federation can never be brought about and therefore he is prepared to purchase Federation by throwing overboard his Free Trade principles. But let Sir Henry Parkes stand as true as steel to his Free Trade principles, or refuse to federate unless Free Trade is made the policy of the Federate Colonies. It would avail the Free Trade party nothing, Federation would be carried over their heads by the Protectionists, and Protection declared by the Federal Parliament to be the policy for evermore.’  
*Making of Australian Commonwealth* ‘p. 34

† Article 85.

‡ Article 92.

rivers for conservation or irrigation."\* No less important was the Railway question which determined the views of many waverers for the federal cause.†

When the different colonies of South Africa were to unite, the two questions that were in the front were railways and sea-ports, the possession of which was considered to be a question of life and death to the colonies as affecting their future prosperity. "The Transvaal, with its large industrial centre in Johannesburg, and without any great need for customs and revenue, had wished to revise the tariff in the direction of free trade, while the coast colonies, believing that, if manufacturers were protected, they would spring up, not in the interior, but at the coast, owing to the lower cost of living and lower wages there, were in favour of higher protection, particularly as that policy coincided with their desire for more revenue. On the other hand, a union of any kind was endangered by the very strong desire of the agricultural population of the Transvaal for protection against the farmers of the Cape Colony. Transvaal farmers regarded the great market of Johannesburg as peculiarly their own preserve, and were clamorous for protection against the successful competition from the Cape."‡ But the economic gain that was to come to them as a result of the union ultimately dismissed all other objections and effected the union.

\* Article 100.

† The following Articles settled the railway question —

"The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State." Article 98

"The Parliament may by any law with respect to trade or commerce forbid, as to railways any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable or unjust to any State due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways." Article 102

Ibid. Also Article 104.

‡ Brand. 'Union of South Africa' p. 17.

Ibid p. 18. (This refers to railways.)

These questions were solved by the provisions of Articles 127-131 of the Constitution of South Africa to the satisfaction of all the parties concerned.



It requires no great stretch of imagination to perceive that a federation opens a wider field, a bigger market and greater commercial facilities to all the members. Just as different individuals and traders combine to float trading companies to reap the resulting commercial advantages of united efforts, similarly different political groups or states come closer together when, along with other advantages, they see in the union better opportunities for expanding their commerce and thus adding to their prosperity. It is easy to understand the manifold difficulties which the traders have to meet when they come across diversities in weights, measures, and coinage in traversing different countries or different parts of the same country. When these diversities are removed and uniformity established, merchants find conveniences which are powerful incentives to union between those states. These principles, which concern economic life of nations, have very largely contributed to the growth of federalism as evidenced in the history of all modern federations. In fact the greed of men has played upon their sentiments and eclipsed the enmity which, in several cases, had existed between neighbourly peoples.

(d) *Political Motives.*

The fact is indisputably correct that a bigger state by virtue of its greater numbers, larger area, and wider resourcefulness commands greater respect than a smaller one. Therefore in all international matters the views of a big state often prevail. Jay had devoted a large space in the *Federalist* to this aspect of the question and he had very wisely warned his countrymen against the dangers of dividing the Confederacy into smaller independent states or into two or more confederacies. He wrote: "One government can collect and avail itself of the talents and experience of the ablest men, in whatever part of the Union they may be found. It can move on uniform principles of polity,

It can harmonise, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defence of any particular part, and that more easily and expeditiously than State Governments or separate confederacies can possibly do, for want of concert and unity of system." \* He had brought home to the minds of the people of America that it is always dangerous to allow jealousy to subsist between neighbouring independent states. He remarked: "Leave America divided into thirteen or, if you please, into three or four independent governments—what armies could they raise or pay—what fleets could they ever hope to have? If one was attacked, would the others fly to its succor, and spend their blood and money in its defence? Would there be no danger of their being flattered into neutrality by its specious promises, or seduced by a too great fondness for peace to decline hazarding their tranquillity and present safety for the sake of neighbours, of whom perhaps they have been jealous, and whose importance they are content to see diminished. Although such conduct would not be wise, it would, nevertheless, be natural. The history of the states of Greece, and of other countries, abounds with such instances, and it is not improbable that what has so often happened would, under similar circumstances, happen again." † His views were not ephemeral, they are of permanent importance and application by their nature. The same view prevailed with the people of Switzerland about the year 1815 when the three races inhabiting that small country united to form a

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\* Federalist, No. IV.

† Ibid.

federation, and since then Switzerland has commanded a respectable position in all European politics.

Though in the present League of Nations all the member-nations theoretically enjoy equality of status, the fact cannot be concealed that the British Empire, because of its largeness of size and extent, always commands greater respect in its counsels. Supposing any disruptive tendency begins in the Empire resulting in its dismemberment, its views would not perhaps be respected in the same degree as is now the case.

This principle has been working ever since political history began.\* It was for this reason that Bismarck had formed the German Empire, Buest and Francis Deak had confederated Austria and Hungary, that the Australians had united together, that the South Africans had overcome the strong disruptive forces, and the efforts of them all had resulted in the making of bigger and more powerful nations. It was, in fact, the glory of enjoying the privileges of being the citizens of big states that the peoples of these countries knowingly and purposely formed unions even by overcoming the enormous difficulties which lay in their path." Similar sentiments guided the proceedings of the Assembly of Nova Scotia which in 1854, unanimously resolved that "the union or confederation of the British provinces, while calculated to perpetuate their connection with the parent state, will promote their advancement and prosperity, increase their strength and influence, and elevate

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\* "A strong sense of the value and blessings of union induced the people, at a very early period, to institute a federal government to preserve and perpetuate it. They formed it almost as soon as they had a political existence; nay, at a time when their habitations were in flames when many of their citizens were bleeding, and when the progress of hostility and desolation left little room for those calm and mature inquiries and reflections which must ever precede the formation of a wise and well-balanced government for a free people." *Federalist*, No. II.

position,\* and thus sowed the first seeds of the formation of the Dominion of Canada.

If the several states lying in the heart of Europe had not formed the German Republic, they would not have individually occupied that important position which the Republic has done after the War. It has gained a position of equality with the first class powers on the Council of the League of Nations.

(e) *Racial and Cultural Factors.*

Ethnological ties naturally exercise very great influence on the life of individuals and, to no less extent, on the life of nations in uniting them.† We shall take up these unifying factors one by one and investigate how far each has helped or hindered the growth of federalism.

(i) *The Racial Question.*

The population of the thirteen colonies of America, about the year 1770, contained a very large proportion of Anglo-Saxons though other European nations were also represented. These colonists resented the supremacy of the British Parliament very much because they could not tolerate the autocracy of the people who were their own kith and kin but who did not allow the colonists the same privileges of government as they themselves enjoyed on the other side of the Atlantic. Yet the War of Indepen-

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\* Quoted in the life of Sir John A. Macdonald, by George R. Parkin, at Page 95.

† The authors of the *Federalist* had attached the same importance to these factors and appealed for unity on the same grounds :

"With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side through a long and bloody war, have nobly established general liberty and independence." *The Federalist*, No. II.

dence left much of common feelings and sentiments between the two countries, and even upto this day, in all international affairs, the two Anglo-Saxon nations very often come together and exercise that wholesome influence which proceeds from union. If the racial similarity, in some measure, separated the colonies from the mother-country for reasons which need not be detailed here, yet the same factor enabled the colonies to federate together in 1787, and to grow into the world's richest country and one of the most powerful nations.\*

When Sir Henry Parkes was conducting his campaign in favour of the Australian federation he had appealed to the racial sentiments of the people. His words 'The crimson thread of kinship runs through us all' touched the hearts of the people and thence forward the movement for federation increased in volume and importance. These are two examples of federations having been formed between peoples of the same race and speaking the same language.

But what is particularly of importance to us here is not the similarity but the dissimilarity of races which has pointed to the necessity of a federal union. The history of federalism makes it abundantly clear that racial dissimilarity, in the presence of other common interests, has been found not impeding but accelerating the cause of federalism. Lord Durham had found the French and the English warring against each other in Canada. He wrote: "At the root of the disorders of Lower Canada lies the conflict of the two races, which compose its population; until this is settled, no good government is possible."†

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\* "To all general purposes we have uniformly been one people; each individual citizen everywhere enjoying the same national rights, privileges and protection. As a nation we have made peace and war; as a nation we have vanquished our common enemies; as a nation we have formed alliances, and made conventions with foreign states," *The Federalist*, No. II.

† Report, vol. II. p. 72.

And he added: "Though I have mentioned the conduct and constitution of the Colonial government as modifying the character of the struggle, I have not attributed to political causes a state of things which would, I believe, under any political institutions, have resulted from the very composition of society,"\*

Writing of the attitude of the English towards the French he remarked: "It is not any where a virtue of the English race to look with complacency on any manner, customs or laws which appear strange to them; accustomed to form a high estimate of their own superiority, they take no pains to conceal from others their contempt and intolerance of their usages. They found the French Canadians filled with an equal amount of national pride; a sensitive, but inactive pride, which disposes that people not to resent insult, but rather to keep aloof from those who would keep them under. The French could not but feel the superiority of English enterprise; they could not shut their eyes to their success in every undertaking in which they came into contact, and to the constant superiority which they are acquiring. They looked upon their rivals with alarm, with jealousy, and finally with hatred. The English repaid them with scorn, which soon also assumed the same form of hatred. The French complained of the arrogance and injustice of the English; the English accused the French of the vices of a weak and conquered people, and charged them with perfidy. The entire mistrust which the two races have thus learned to conceive of each other's intentions induces them to put the most construction on the most innocent conduct; to judge every word, every act, and every intention unfairly; to attribute the most odious design, and reject every overture of kindness and fairness, as covering secret designs of treachery and malignity."†

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\* Report, vol. II. p. 63.

† Ibid. p. 33.

Their mutual animosities and jealousies had made smooth administration impossible. The two races had separate schools, separate clubs and societies, and the members of the two never even dined at the same table. § The boys in the streets, while playing together, divided themselves into two parties which they named as English and French.\* In their Schools the French boys read text books which contained matter different in its effect and influence from that which the English boys read. Even the juries were perverted in dealing with the cases of criminals and their verdict always went in favour of the accused, if he belonged to their own race, even when the guilt against him was unmistakably proved. † Perhaps worse racial antagonism—an antagonism which was sapping the very vitals of the nation and making political union impossible—can hardly be imagined. This enmity had checked the growth of population and seriously retarded the prosperity of the country. ‡ Even the genius of Lord Durham, in this confusion, could not find a solution of the problem except by anglicizing Canada. No doubt he was mistaken in this conclusion at least, but his mistake only shows that the height of antagonism was indeed very

§ Ibid. p. 47. Also, "Indeed the difference of manners in the two races renders a general social intercourse almost impossible." Ibid. p. 43.

\*In Montreal and Quebec there are English schools and French Schools, the children in them are accustomed to fight nation against nation, and the quarrels that arise among boys in the streets usually exhibit a division into English on one side, and French on the other." Ibid. p. 39.

† Lord Durham further says: "The course of justice is entirely obstructed by the same cause; a just decision in any political case is not to be relied upon; even the judicial bench is, in the opinion of both races, divided into two hostile sections of French and English, from neither of whom is justice expected by the mass of the hostile party." Ibid. pp. 53-4

‡ In 1832 new comers numbered 52,000; in 1837 they were 22,000 and in 1838 only 5,000. Ibid. pp. 56-57.

great.\* He had proposed a legislative union of Lower Canada and Upper Canada. His view prevailed at that time, but the experiment failed and the French could not be coerced into forgetting their nationality. The ultimate solution was found in the application of federal principles which at once secured for the two races independence in all important local affairs. The Act of 1867 creating the Dominion of Canada has proved successful. It has demonstrated the utter futility of forming a homogeneous mass out of a heterogeneous mixture of races, but it has established beyond doubt that there are conditions of national existence in which federal union is stronger than even an unnaturally imposed perfect union.

Sir C.P. Lucas, in his Introduction to the Report, thus describes the effect of federal union upon the racial question : "How far race antagonism in Canada has been diminished since Lord Durham's time, and to what degree French and English have come closer to each other, it would be difficult to estimate with any approach to accuracy. French are French, and British are British, and will remain so till the end. On the other hand, modern life makes for greater courtesy and forbearance as between peoples and races. French and English have lived side by side seventy more years since Lord Durham wrote, and have acquired habits and traditions of co-operation ; and most important point of all—the Confederation of Canada by the British North America Act of 1867 has completely altered the position."†

The history of Switzerland also tells the same tale. Here three races have successfully withstood all tests of national existence and the Confederacy is now one strong

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\* Lord Durham had charged the Government of that time with having done nothing to remove the evil of racial antagonism. He held that its policy had only aggravated the evil. *Ibid.* p. 63.

† Introduction to Lord Durham's Report, vol. I. p. 284.



nation as strong in its administration as any other country where only one race forms the whole population. The latest example is afforded by the history of the Union of South Africa. Before the Union was formed there were three distinct races struggling in South Africa, the English, the Dutch, and the natives called 'Kaffirs.' The war for supremacy between the two European races, to some extent, showed the necessity of forming a union with the result that a federal form of government was established, which resembles a unitary government in several respects.\* In Switzerland, too, there are three distinct races, namely, the French, the Germans, and the Italians. The reasons and circumstances that led to the growth of federal government in this small country have already been discussed; here we only mean to observe that the problem of races in these countries could not have been solved, consistent with the ideal of keeping the country one united whole, except by the application of federal principles.

There is another aspect of the racial question which needs some discussion here. That is the problem of native population which confronts people only in colonised territories. No such problem faced the Swiss, the Germans, or any other people in Europe. In the U. S. A. the Red Indians and the imported Negroes were and still are in quite large numbers, particularly in the Southern states. But in Australia the native population is dwindling before the civilising influence of the white settlers and 'Australia for the Whites' has now become an accepted principle. In

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\* "Hitherto the existence of two conflicting ideals, the spirit of the Dutch Afrikanerism on the one hand and of British dominance on the other, has caused the current of national feeling to flow in separate channels. But since the war has eradicated this profound cause of conflict, the barrier between the channels has been thrown down and the last obstacle to the formation of a common patriotism removed. It is, therefore no paradox to assert that out of war has come harmony." B. H. Brand. 'Union of South Africa', pp. 9-10.

South Africa the Kaffirs considerably outnumber the Europeans.\* The influx of the Indian labourers in that country has further complicated the issue.† But the European, because of his greater ability and political supremacy has, for the present at least, thrown the question into insignificance. Lately the question of the rights and privileges of the Indian population has assumed considerable importance. The compromise arrived at as a result of the Habibullah doputation (1926-27) has made the solution of the problem casier. Yet the future is full of difficulties and it will be an interesting achievement of modern politics to settle the question satisfactorily.

(ii) *The Influence of Language and Literature.*

No other question has offered greater difficulties in the formation of unions and federations than the diversity of languages *vis-a-vis* literature. It is only by correctly understanding and appreciating the views of others that we can at all arrive at unity of purpose, and as these views are expressed by speech or in writing the question of language acquires very great importance. No people will readily agree to give up their language and literature, nor it is physically possible and practicable to force a whole people into adopting an alien language as their own.

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\* Comparing the native question of U. S. A. and South Africa, Brand says: "No other nation is faced with a future so perilous. There are, it is true, twice as many Negroes in the Southern States as there are in South Africa, but in the United States as a whole the white population vastly outnumbers the black. The whites of the South have behind them the enormous white reservoir of the North. In South Africa there are five Kaffirs to every white man, and they are increasing fast." *Ibid.* p. 27. Also *Ibid.* pp. 28-29.

† The question of the Indian population has acquired greater importance since the controversy between Sir Tej Bahadur Sapru, the Indian delegate, and General Smuts, the South African delegate, at the Imperial Conference. While the resolution of reciprocity of treatment between the citizens of the British Empire had been accepted South Africa has not yet recognised the equality of Indians in political rights.

Discussing the question of the language of a dependency being changed by the dominant country, Sir G. C. Lewis remarks: "But if it be inexpedient for the government to change suddenly the laws of a dependency, it is still more inexpedient for the government to attempt to make a sudden change in its language..... The great mass of mankind never acquire a language by study; they only know the language which they imbibe during infancy and childhood. It is no more possible for a government, by the expression of its will, and by offering rewards or threatening punishments, to change suddenly the language of its subjects, than to add a cubit to their stature or to give them a sixth sense."\* There have been cases of conquerors forcing their own language upon the mass of the conquered country, but the results have been as disastrous as the attempts were foolish and short-sighted. "Many examples might be given of the mischievous effects which have been produced by an attempt to force the language of a government upon the people. Thus when Joseph II attempted to treat Hungary as a dependency, to incorporate it with Austria, and to reform its laws by his own authority, the people for a time submitted, unwillingly, to his useful though hastily introduced reforms; but when he ordered St. Stephen's crown to be carried to Vienna, and issued an edict making German the language of government throughout Hungary, the people rose in insurrection against him. In like manner, the measures of the King of Holland for introducing the use of the Dutch language into Belgium, in the place of the French language which was spoken by the educated classes, created a general discontent throughout Belgium, and contributed materially to produce the Belgian revolution, and the consequent separation of Belgium from Holland."†

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\* "Government of Dependencies," pp. 267-268.

† Ibid. p. 268.

Differences in languages have exercised great influences upon the history of nations. Lord Durham, in his report on Canada, discussing the subject of languages observed: "The difference of language produces misconceptions yet more fatal even than those which it occasions with respect to opinions, it aggravates the national animosities, by representing all the events of the day in utterly different lights. The political misrepresentation of facts is one of the incidents of a free press in every free country; but in nations in which all speak the same language, those who receive a misrepresentation from one side, have generally some means of learning the truth from the other. In Lower Canada, however, where the French and English papers represent adverse opinions, and where no large portion of the community can read both languages with ease, those who receive the misrepresentation are rarely able to avail themselves of the means of correction. It is difficult to conceive the perversity with which representations are habitually made, and the gross delusions which find currency among the people; they thus live in a world of misconceptions in which each party is set against the other not only by diversity of feelings and opinions, but by an actual belief in an utterly different set of facts."\*

Many are the complications which the diversity of languages introduces into the political problem of communities. But most of these are solved by the application of federal principles. Though United States of America and Australia had no language difficulty to solve, the statesmen of Canada, Switzerland, and South Africa were considerably handicapped in their attempts to tide over the problem of multiplicity of languages. A unitary constitution where the necessity of one legislature and one medium of speech is apparent was hardly suitable. The only alternative lay in the recognition of all the important languages and putting

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\* Report. vol. II, pp. 40-41.

them all on one level as far as the administration was concerned. After the passing of the Act of 1791, in Canada both the languages, English and French were in use in the Legislature at Quebec.\* The practice created considerable administrative difficulty. Lord Dalhousie had expressed his views in a confidential despatch, November 21, 1823, in which he wrote: "At present the use of two languages indiscriminately, in the Legislature and in the Court of Justice, creates an extraordinary and absurd confusion, leads to immense additional labour and expense, and nourishes prejudice and separation of feelings between the two classes of the people."† Lord Durham's views were equally emphatic as to the evil effects of multiplicity of languages which had eclipsed the prosperity of Canada at the time. He clearly showed how this diversity in language and literature had checked the growth of mutual sympathies between the English and the French. Lord Durham has described the condition of Canada in these significant words: "As they are taught apart, so are their studies different. The literature with which each is the most conversant, is that of the peculiar language of each; and the ideas which men derive from books, come to each of them from perfectly different sources. The difference of language in this respect produces effects quite apart from those which it has on the mere intercourse of the two races. Those who have reflected on the powerful influence of language on thought, will perceive in how different a manner people who speak in different languages are apt to think; and those who are familiar with the literature of France know that the

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\* "The use of both languages was accepted as a matter of course from the beginning of the constitutional change without any formal resolution by either house, and this applied also to bills introduced." Brymner's Report on Canadian Archives for 1791, Introduction, p. XXIX.

† Quoted by Sir C. P. Lucas in Durham's Report, vol. II, p. 46, foot-note.

‡ Quoted, Ibid. p. 40, foot-note.

same opinion will be expressed by an English and French writer of the present day, not merely in different words, but in a style so different as to mark utterly different habits of thought. This difference is very striking in Lower Canada; it exists not merely in the books of most influence and repute, which are of course those of the great writers of France and England, and by which the minds of the respective races are formed, but it is observable in the writings which now issue from the Colonial press. The articles in the newspapers of each race, are written in a style as widely different as those of France and England at present; and the arguments which convince the one are calculated to appear utterly unintelligible to the other."\* Some persons held that only English should be recognised as the official language and efforts should be made to make it the *lingua franca*, but, impracticable as their proposal was, their efforts did not materialise.† Article XII of the Act of 1840, while allowing translations into French, recognised English alone as the official language to be used in the debates and proceedings of the legislature of Canada. But Lord Elgin got this Article amended in 1848 and the French were allowed to use their own language. The British North America Act of 1867 also finally recognised both the languages and settled the question once for all.‡

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\* Report, Vol. 11 pp. 39-40.

So powerful was the influence of the two sets of literature that not even a close neighbourhood lasting over three quarters of century could remove the differences,

† In February 1789 Mr. Finlay, Post Master General of Canada, had made one such suggestion. Durham's Report. Vol. II, p. 40, foot-note by Lucas.

‡ Section 133 of the Act runs: "Either the English or the French Language may be used by any Person in the Debates of Houses of Parliament of Canada and of the House of the Legislature of Quebec ..... The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages."

In the pre-War Austro-Hungarian Empire the question of languages was not an unimportant one. The Austrians would not allow any other language but German nor the Magyars of Hungary any but Magyar. Even for purposes of joint administration the two delegations met separately for all purposes except when a joint session was held in which case there was only voting but no debate. This unsatisfactory arrangement did not contribute to the growth of sympathies so very necessary to the success of a confederation. The ultimate result was the break up of the Empire after the War.

In Switzerland also there was the same difficulty of finding a common language, but it was overcome by the recognition of all the three languages as equal, thus respecting the susceptibilities of the three races. The Canton where a particular language predominates conducts its administration through that language. This arrangement is possible only under a federal form of Government.

The Dutch of South Africa are as much in favour of retaining their own language as the English theirs. They established union but the equality of the two languages had to be recognised and one section of the Act of Union expressly did it.\*

We now see that the states where the language problem was absent easily federated together, yet it must be admitted that even the complex problem of the variety of languages has been successfully solved by the application of the principles of federal government. This dissimilarity in languages is no obstacle to federation. On the contrary, it is an argument in favour of federalism which clearly aims at recognising differences and adjusting

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\* Article 137 of the Constitution of South Africa lays down: "Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality. and possess and enjoy equal freedom, rights, and privileges."

them on the basis of equality for all by enabling each province to adopt the language of the majority in its administration. Similarity of languages may hasten a nation's march towards a unitary form of government but dissimilarity points to the necessity of establishing a federal government. Where all people cannot be expected to adopt one language as their own the only solution lies in recognition of the equality of all the languages in use and permitting their employment in Local administration as much as is compatible with the well-being of the people.

(iii) *The Problem of Religion.*

The problem of religion offers great difficulties in the unification of the various parts of a country divided on religious basis. If of two states one follows one religion and another a different religion, a unitary government seems unworkable. True, in modern days religion has ceased to excite as much interest as it did in days of old and modern history is free from the bloodshed of crusades and religious wars. Modern states are not formed on religious grounds, and generally they keep politics free from religious encumbrances, yet the religious interest is by no means extinct. The recent examples of Switzerland and Ireland are sufficient to confirm this truth. Protestant Ulster opposed the demand of Catholic Southern Ireland to cut off the country's connection with the British. England has a reputation for her religious toleration and the people in this country have creditably succeeded in keeping politics separate from religion. But even here the recent controversy over the acceptance of the revised Prayer Book created no little heart-burning and divided the political parties into two groups based clearly on religious grounds, so much so that while the Premier earnestly appealed to the House for acceptance of the revised Book, his Lieutenant, the Home Secretary, strongly opposed him and the party whips had to be



withdrawn to allow free voting on this question. In Italy Mussolini has only very recently succeeded in settling the quarrel between the Government of Italy and the Vatican, which had, for a long time, been engaging the attention of Italian statesmen and attracting the eyes of the Catholic world.

In Canada there had been religious differences no doubt, but happily they had not accentuated political controversies. Lord Durham observed in his Report, "It is a subject of very just congratulation, that religious differences have hardly operated as an additional cause of dissension in Lower Canada; and that a degree of practical toleration, known in very few communities, has existed in this Colony from the period of the conquest down to the present time."\* But in Switzerland no such toleration existed nor the religious differences, so acute in the country, followed any boundaries. † The spread of Protestantism in the sixteenth century created religious differences of no small dimensions. The year 1531 saw the out-break of a Civil War between the Protestant cantons on one side and the Catholic cantons on the other. ‡ In 1712 there was a second religious war. In the year 1845 the religious question reached its climax and an armed rising, which also sought to weaken the powers of the central government, took place and resulted in the defeat of the Catholic party. But the subsequent changes and amendments in the constitution led to reconciling the Catholics who were opposed to the liberal movement of the nineteenth century. Greater autonomy for the cantonal governments satisfied them and since then there has been no great religious trouble in that country.

Federalism, by recognising the religious differences and granting a little more power to the provincial

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\* Report, Vol. II, p. 137

† Brooks, 'Government and Politics of Switzerland,' pp. 33-34.

‡ Ibid. pp. 43-44.

Governments or by some such device, can solve the religious problem successfully as it has solved most problems. But it must be remembered that this is applicable only to the case of a country in which different religious communities form predominant majorities in different parts and these parts are divisible into separate administrative units. On the other hand, where people professing many religions are scattered all over the country and it is physically impossible to carve out provinces in each of which a particular religion predominates, federalism can not offer a solution of the constitutional problem. No doubt, in this modern age religion is not creating very many troubles in politics, but as long as man believes in God and a particular mode of worship, religious differences are sure to exist in society. It is for this reason that all modern constitutions begin with the fundamental recognition of freedom of conscience and the State does not patronise any particular religion, for all constitution makers know that once the fire of religious animosities is let loose there is no end to it. It seems most unlikely that even the spread of socialism would obliterate these religious differences, particularly in Asia which has been the cradle of World's religions. And federalism is better able to effect religious reconciliation than a unitary Government.

(f) *Colonial Policy.*

The colonial policy of the dominant country has also, though in an indirect way, helped the growth of federalism, in different colonies. A mother country always formed separate colonies even in the same country and treated them as separate units of administration. This resulted in the growing up of states lying near each other, semi-independent *vis-a-vis* the mother country, but independent of each other. And very often the treatment of these colonies by the mother country resulted in uniting them against herself. The thirteen colonies that lay scattered along the eastern coast

of North America would not have set the first example of a truly federal union, at least so early as they did, if England's colonial policy, during the latter half of the eighteenth century, had been determined by the wiser counsellors of George III. It was the encroachment upon their freedom from taxation\* by England that goaded the colonies into presenting a united front to the policy of English statesmen, and later on formed them into the United States of America. In their Declaration of Independence the colonists laid great stress upon the policy of George III, which they resented most and which, as they declared, had compelled them to sever their connection with the mother country and united them into the first federation of modern days. The Declaration charged the King with the commission of some and the omission of other acts whereby, in their opinion, as they then said, "He has abdicated government here, by declaring us out of his protection and waging war against us. He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people." These and similar other grave charges contained in the Declaration were undoubtedly not so true as they were

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\* Dealing with the subject of colonial policy Bryan Edwards writes :—

"The leading principle of colonisation in all the maritime states of Europe (Great Britain among the rest) was commercial monopoly. The word monopoly in this case admitted a very extensive interpretation. It comprehended the monopoly of supply, of the monopoly of colonial produce, and the monopoly of manufacture. By the first, the colonists were prohibited from resorting to foreign markets for the supply of their wants ; by the second, they were compelled to bring their chief staple commodities to the mother-country alone ; and by the third, to bring them to her in a raw or unmanufactured state, that her own manufacturers might secure to themselves all the advantages arising from their further improvement. This latter principle was carried so far as to induce the late Earl of Chatham to declare in Parliament, that the British colonists in America had no right to manufacture even a nail for a horse shoe."

'History of the East Indies,' Vo. II, p. 565 and also p. 443.

Sir George Cornwall Lewis, in his 'Essay on the Government of Dependencies' has also expressed similar views, vide his book pages 214-215

represented to be, nevertheless they clearly show that the policy of the Colonial Office in London was far from being wise and far-sighted.

Lord Durham had severely criticised the policy of the Colonial Office with regard to the British colonies in North America, and he had boldly suggested that the remedy to cure the ills of Canada lay in the transference of responsibility of administration from the hands of the Colonial Secretary of State, living thousands of miles away from the scene, to the natural leaders of the people.\* The persistence with which the Assembly of Lower Canada threw out the Civil List and created complete deadlock in the administration demonstrated in unmistakable terms the Canadians' disapproval of the Colonial Policy of Britain. And though Durham had proposed Anglifying of Canada and the establishment of legislative union between the Upper and Lower Provinces—another mistaken view of the Canadian problem—the question was satisfactorily solved only by the formation of a federation of the several colonies.

It is clear, therefore, that the policy of the mother country whether leading to the oppression of the people of the colonies or to the neglect of the true state of affairs, has invariably resulted either in a complete separation of the colonies from her or by her granting responsible government to them, but in each case resulting in the formation of a federation. The mistaken British Colonial Policy of

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\* Sir C. P. Lucas, in his Introduction to Lewis' 'Government of Dependencies,' thus expresses himself regarding Durham's report: "Lord Durham's celebrated mission to Canada in the year 1838 and the report he issued upon his return in 1839 was the beginning of a new era in the colonial policy of Great Britain. It led to the grant of self-government in its widest sense to the large colonies, and it sowed the seeds of the confederation. Its immediate result was the Union of the two provinces of Upper and Lower Canada in 1840-1 under responsible government, and it bore full fruit, when in 1867, these two provinces, since known as Ontario and Quebec, were with Nova Scotia and New Brunswick formed into the Canadian Dominion."

Introduction, p. XXVII.

the eighteenth century had opened the eyes of the British statesmen of the nineteenth century and thanks to the outspokenness of Lord Durham the fatal mistake of six decades ago had not been repeated in the case of Canada. He wrote in his report: "If in the hidden decrees of that wisdom by which this world is ruled, it is written that these countries are not for ever to remain portions of the Empire, we owe it to our honour to take good care, when they separate from us, they should not be the only countries on the American Continent in which the Anglo-Saxon race shall be found unfit to govern itself."\*

Commenting upon this brilliant exposition of Britain's future treatment of the colonial question, Sir C. P. Lucas remarked: "These words apply beyond Canada and beyond America. The spirit of them transcends the sphere of settlement, it is the living force of the whole British Empire. The words are the message of a great Englishman to his fellow countrymen, that the one thing needful is to leave behind a legacy of what is permanently sound and great. If England continues to be inspired by what Lord Durham taught so well, then as Great Britain has grown into Greater Britain, so Greater Britain will grow into Greatest Britain, to the glory of God the Creator, and to the well-being of mankind."†

And he paid glowing tribute to Lord Durham in these words: "To all times and to all sort and conditions of men he has preached the doctrine, that for peoples, as for individuals, the one thing worth living for is to make, not to destroy; to build up, not to pull down; to unite small disjoined elements into a single whole; to reject absolutely and always the doctrine Divide at Impera, because it is a sign of weakness, not of strength; to be strong and fear not;

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\* Report. Vol. II, p. 310.

† Lucas' Introduction to the Report, Vol. I, pp. 316-317.

to speak unto the people of the earth that they go forward." ‡

(B) *The Nature of a Federal Government.*

We have seen how in the medley of political controversies and the confusion of political convulsions the solution has been found in the application of the principles of federalism. Where political issues have been complicated by the existence of multilateral disputes, racial, linguistic, religious, economic, and commercial, federalism has proved an efficacious panacea which has cured many a political ill. Where all other political devices have proved abortive federalism has set at rest all troubles that seemed to endanger the very existence of society. And the extent of the success of the remedy has been in direct proportion to the number and seriousness of the complications. Federalism may, therefore, be fitly defined in the language of higher mathematics, as a complex function of several variables. And it is for this reason that attempts on the parts of one country to copy in toto the principles of federalism adopted by another country have seldom, if ever, succeeded. Political societies, like individuals, differ in their temperaments and environments and by a slight change, to continue the mathematical metaphor, in the value of one variable the ultimate value of the whole function has been found consistent with the solution desirable. But it should never be understood that federalism is the best political device for all countries and for all times. What is here contemplated is to indicate the very great extent to which, where other forms of polity have failed, federalism has come to the rescue.

Yet the charge brought against federalism is that it is a weak form of government. The critics hold that federalism, from its very nature a compromise between several

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‡ Ibid. p. 316.

contending parties, does not lend strength to government. Brand, in his apologia for a unitary form of government, has levelled this charge of weakness against federalism rather strongly.\* He has admired the African statesmen for adopting a unitary constitution in preference to a federal one—he considers that constitution to be of unitary type. But in the same breath he has struck a different tune and paid tribute to them for having compromised.†

We shall discuss here if and how far this charge of weakness is true. If by weakness is meant that a federal constitution is incapable of lasting long or that it cannot allow proper national sentiment to grow then the histories of the United States of America and Switzerland are a sufficient refutation. To-day the U. S. A. is the richest and one of the most powerful nations in the world. Her advice is anxiously sought for in all international affairs of the first magnitude. All European powers consider it a privilege to be on friendly terms with her. Her arms have brought her crowning victories in all foreign wars no less than in domestic disputes. She has successfully defended

\* "But federalism is, after all, a pis aller, a concession to human weakness," 'The Union of South Africa,' p. 46.

† "Federalism must be accepted where nothing better can be got, but its disadvantages are patent. It means division of power and consequent irritation and weakness in the organs of government, and it tends to stereotype and limit the development of a new country." Ibid. pp. 46-47.

† "No opposition in Transvaal leaders impressed upon their followers the fact that the document was the result of compromises by all parties. It was thus a delicately balanced equipoise and no alteration could be made without risk of total collapse." 'The Union of South Africa,' p. 36.

"Compromise is again written large over the provision surely a strange one that ..... ." Ibid p. 52.

"Compromise was necessary, and in the art of compromising Afrianders are post-masters," Ibid. p. 61.

"South African union is in itself a great step forward in the direction of imperial consolidation. It simplifies at once all imperial problems and particularly that of defence, which for the safety of the empire and its component parts must be grappled with at once." Ibid. p. 30.

the Monroe Doctrine in the New World against the clamour of world's greatest powers. Her admission to the League of Nations which, as all nations think, is bound to enhance the reputation of the League, is anxiously sought for. Though she is still out of the League, all the international disputes are solved in consonance with her designs and views. She has called the various conferences for world's peace. It was her admission into the War which settled the fate of Europe. Her constitution is working satisfactorily.

Again no single colony of British North America or Australia ever commanded that respect in Imperial affairs as the Dominion of Canada or the Commonwealth of Australia does now. No one state of the old German Empire or the present German Republic was strong enough to win for Germany one of the first places among world's greatest powers till the federal ties made it possible.

Prejudice apart, federalism has created unity where none was possible under any other form of government. By bringing closer together several smaller states it has created powerful nations, and by putting down mutual jealousies and interstatal disputes it has brought those blessings without which world's peace was in constant danger of being disturbed. It would not be incorrect to say that federalism has proved a strong solvent which has dissolved all those hard substances which were incapable of being thrown out in any other wise, and has thus contributed largely to the problem of world's peace by creating smaller leagues and reducing the chances of mutual friction and interstatal wars.

But the question is: Is compromise essentially a weak tie? A little reflection will give the answer, 'No.' Ever in countries enjoying unitary forms of government there are statesmen and political parties—and the system of party government is extending day by day—who hold divergen



and sometimes diametrically opposite views. When legislation is on the anvil of discussion the party in power tries to satisfy the opposition by making the measure less unacceptable and less offensive, by accepting certain amendments moved by the opposition. This creates a larger number of people who accept the legislation and abide by it peacefully which they would not have probably done without those amendments. This is all compromise and it certainly imparts strength to the administration. Our every day actions depend largely upon compromise and we find it the best way to win popular support. In fact we cannot do away with compromise, and if it is an evil it is a very necessary evil. It will not require much effort to realise that compromise imparts strength and obstinacy weakness to a government.

But there have been cases, like those of the leagues of the medieval period and the pre-War Austro-Hungarian Empire, which proved failures owing to weaknesses. The reason of these failures has, as has already been remarked and amply shown in the previous chapter, invariably been the absence of the material and environments favourable to the application of federal principles. The palm will not grow on the Himalayas, the banana will not sprout in the deserts of Arabia, the lion will not find Sahara a habitable place, nor the kangaroo will live long in Kashmir, so will federalism not thrive in a country where the need for it is not manifest nor the circumstances favourable. Statesmen and politicians like the Botanist, the Horticulturist, and the Zoologist have failed to grow federalism in a country unsuitable to its growth. Evidently there are limitations to the success of all forms of polity including the federal type, but limitations are by no means, at least they ought not to be so interpreted, the sources of weakness.

The tendency has of late been to outlaw war, to create international sympathies and thus to bestow the

blessings of peace on the world. This has been and is being done by enlarging the sphere of national and international activities. The latest device to achieve this end is the establishment of the League of Nations which has, having regard to its infancy and limitations, proved successful and, therefore, powerful in settling disputes. In this sphere federalism has decidedly been the precursor of the League and federalists the ambassadors of peace.

Discussing the comparative merits and demerits of federalism Prof. Dicey says, "Federalism, lastly, creates divided allegiance. This is the most serious and the most inevitable of the weaknesses attaching to a form of government under which loyalty to a citizen's native state may conflict with his loyalty to the whole federated nation."<sup>\*</sup> He has cited the two cases of the Swiss Sonderbund and the American Secession.<sup>†</sup> But the same can with equal force be said of quelling any internal disturbance in which a soldier is asked to open fire on the leader of a movement which may have the soldier's own sympathy. Was not the same problem present before the executioner of Charles I? Do not soldiers have to kill their own relatives and sometimes their near and dear ones? In all cases of civil wars similar problems confront people even in all unitary governments. Just as we have sometimes to sacrifice our personal interests to safeguard the broad interests of the nation so we should not regret placing national interests before local or provincial interests.

Federalism has enabled the French of Lower Canada, with their own language, customs, religion and culture, to live in peace and amity with the English of Upper Canada. The French, according to Prof. Dicey, would have found it more difficult to maintain their French character if they had gone out of the Dominion and become a part of the

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<sup>\*</sup> 'Law of the Constitution,' Introduction, p. LXXVIII.

<sup>†</sup> Ibid. p. LXXIX.

United States of America.\* But federalism has produced a thriving nation to the North of the United States. It is under the rule of a federal government that the Germans, the French, and the Italians have lived happily for such a long time in Switzerland. The application of federal principles has enabled them to solve their many intricate problems.† So far people had been accustomed to only three forms of governments, viz. monarchical, aristocratic, and democratic, but federalism has added a new kind and it will not be incorrect to say that it has introduced a fourth dimension in political mechanics. In short, federalism has removed friction, stopped disintegration, suppressed jealousies, checked wars, and created powerful, peaceful and thriving nations out of a heterogeneous mass of human beings living in different parts of the habitable globe. This result could not have been achieved under a unitary government. To call federalism—the very source of union, compromise and interstate peace—as a weak polity will be a contradiction in terms. For it has imparted vigour where weakness prevailed, bestowed peace where jealousies and suspicions were making political air foul, and created prosperous big states where smaller and weaker states were fighting for their very existence. No doubt unitary government is by its very nature, more lasting and better organized, still where it is impracticable necessity points to the federal type which, though it may not be the best solution by itself, is undoubtedly the second best and most certainly the best for a certain set of circumstances. ;

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\* 'Law of the Constitution.' Introduction, p. LXXIX.

† "..... a people divided by so many geographical barriers, so divergent in language and religion, and also, it may be added, in race and customs, must needs provide ample leeway to its governing machinery for local liberties and local self-rule. As a matter of fact this condition is fully met by the federal system of government and by the large measure of decentralization prevailing in the various states." Brooks, 'Government and Politics of Switzerland,' p. 13.

*(c) Reflections on the Future of Federalism.*

For ages past federalism has served mankind and solved problems which had defied solution under any other form of government. It is knitting together and uniting smaller states and in this way contributing largely to the problem of world's peace. The fathers of the Union of South Africa have applied federal principles in matters of legislation, fixing of the seat of government and judiciary, and they have thus satisfied the local sentiments of different colonies. The smaller Soviet Republics have found security only in a federal union. The United States of Brazil have drawn up their constitution on a federal pattern. Modern History, in fact, abounds in examples of the application of federalism to the solution of political complications.

Federalism is undoubtedly a popular device. Its utility is increasing and it is at present a live force. But what is of special significance is to speculate how far the British Empire is going to adopt federal principles in the common councils of the widely separated parts. But before attempting to discuss the possibility or otherwise of applying federal principles to the solution of Imperial problems it is necessary to mention some of the broad objects and ideals for which this vast Empire is striving to stand. With the Independence of U. S. A. the old conservative principles of foreign policy in so far as they concerned the Empire have been wisely abandoned, and with the growth of democracy British Parliament has declared the Empire's adhesion to making it a great Commonwealth of Nations in which each part, while retaining its local or what is better described as domestic autonomy, is to enjoy all the benefits and privileges which are the necessary results of being a member of a vast Commonwealth.

Some of the common points on which the members of the Empire unite are defence, commerce, and communica-

tions. Common allegiance to the British throne is the cementing material which, consistent with the ideal of national unity, keeps the widely separated and otherwise disjointed parts together. Under the protection of the Union Jack, the symbol of Imperial unity, the French of Lower Canada, the Boers of South Africa, the Britishers of Australia, and the Hindus and Muslims of India feel security of life while travelling over distant lands and oceans. The growth of this sentiment has been slow yet steady. It has often been accelerated by those world catastrophes which have enveloped all the continents and even threatened a disruption of society. Ever since the meeting of the first Colonial Conference of 1887 the British as well as Dominion statesmen have brought their heads together to remove doubts and to create greater and better opportunities for mutual appreciation and understanding. Each successive Colonial or Imperial Conference has improved upon its predecessor and by harmonising the foreign policy of the Empire given each member a voice in its determination to the good of the whole as well as of each integral part and ultimately contributed to mutual understanding.

We now propose to indicate in what manner the problem of Imperial unity is likely to grow in future. It is certainly dangerous to attempt at political prophecies when changes are taking place almost every day. No one can foretell what future holds in its hidden folds, yet, if a rough conjecture be permissible, we can throw some light dim as it may be, upon the future. A few questions arise out of the Imperial problem. Will the Empire split up into fully independent states? Will it become a true federation in future? Or will it approach the ideal of a perpetual league of nations, in other words a Commonwealth, in which each part will be on a footing of equality with the others? If none of these, what other form is it likely to take?

There is a fear in some quarters which is not altogether baseless that there is a tendency on the part of the Dominions to assume complete independence and go out of the Empire. The recent flag controversy in South Africa and the treaty of commerce concluded between the Union Government and Germany, which places Germany on the same footing as Britain, and the growing desire for more independence in Canada evidenced by a desire on the part of that Dominion to send its own ambassadors to U. S. A. and also to conclude commercial treaties with foreign states to be signed by its own representatives as well as the separate representation granted to the Dominions and India on the Council of the League of Nations, and finally the relation subsisting between the Irish Free State and Britain are cited as examples of the possibility of the dismemberment of the Empire. What is it which is likely to determine the choice of the Dominions for or against secession from the Empire? It has been asserted that Britain is neither justified nor likely to attempt to keep the self-governing Dominions within the orbit of the Empire by force of arms.\* The very implication of the term 'dominion status' precludes the possibility of force being used to coerce the Dominions into remaining within the Empire. Membership of the Empire so long as it does not really encroach upon the local autonomy of the Dominions and also so long as it confers privileges and benefits that are the natural results of partnership will always be looked upon as a boon. No one dominion is at present strong enough to enjoy the same security by relying on its own strength as it does now, and

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\* In his Memorandum on the Federation of the British Empire. Sir Julius Vogel wrote as early as February 21. 1886. and this view has only strengthened since then : "But as regards the constitutional Colonies it is generally understood that, though the mother country desires to retain them she would not force them to remain parts of the British dominions in the face of a well matured desire on the part of one or more of them to separate."

Keith. 'Speeches and Documents on Colonial Policy,' Vol. 11. p. 198.

none of them will be so foolish as to set up a completely separate defence when without loss of freedom it can rely on the protection of the British fleet. It is unlikely that Britain will forget the lesson it has learnt after the separation of U. S. A. The increasing association of the Dominions and India in all matters concerning the Empire as a whole precludes all possibility of the creation of circumstances which might compel the Dominions to go out of the Empire. As was pointed out by the right Hon'ble Joseph Chamberlain, in his speech at the first meeting of the Colonial Conference of 1897, the bond of sentiment that unites the members of the Empire is really great and when it is coupled with the material advantages derived from that union there seems to be little ground for apprehending a rupture in the future.\* Recent developments in the Imperial policy of Britain go to suggest that before any Dominion is driven to the extreme step of going out of the Empire all its requirements will be met by a peaceful settlement of the issues involved. The wave of democracy that is rising day by day has inspired all relations with the Dominions which have acquired and are acquiring all that is necessary for complete domestic autonomy. The question, therefore, whether the Empire will split up into parts may safely be answered in the negative.

What then shall be the future composition of the Empire? The history of the Colonial and Imperial Conference affords ample material to go into this question deep enough to investigate the future developments likely to occur. It was at the Colonial Conference of 1897 that the question of Imperial federation was for the first time seriously raised. The Secretary of State for the Colonies, Joseph Chamberlain, in his opening speech remarked: "In this country, at all events, I may truly say that the idea of

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\* Keith. 'Speeches and Documents on Colonial Policy,' Vol. 11, pp. 210, 211, 223.

federation is in the air. Whether with you it has gone as far, it is for you to say, and it is also for you to consider whether we can give any practical application to the principle. It may well be that the time is hardly ripe for anything definite in this regard. It is quite true that our own constitutions have all been the subject of very slow growth and that they are all the stronger because they have been gradually consolidated, and so perhaps with Imperial Federation; if it is ever to be accomplished, it will be only after the lapse of a considerable time and only by gradual steps." He had suggested the creation of a great council of the Empire to which the Dominions might send their representatives.† Much water has since then flowed down the Thames, for when in the Imperial Conference of 1911 Sir Joseph Ward, the premier of New Zealand, moved a resolution for the creation of an Imperial Council vested with the powers of legislating on all matters common to the Empire the resolution met with unanimous opposition from the premiers of all other dominions and also from the president of the Conference, Mr. Asquith, the British Premier. Speaking of the Empire, Sir Joseph Ward remarked: "It is a family group of free nations, England is the first among the free nations, and, consequently, changes during the last three-quarters of a century, in my opinion, demand that the old relation of 'mother to infants' should cease. The day for partnership in true Imperial affairs has arrived.....".‡ The resolution was opposed by General Botha, the Premier of South Africa, on some grounds and by Mr. Asquith on quite different grounds. The difference of views enunciated by these two statesmen clearly shows that neither party was willing to

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\* Keith, 'Speeches and Documents on Colonial Policy' Vol. II pp. 221

† Ibid. p. 212.

‡ Keith, 'Speeches and Documents on Colonial Policy,' Vol. II. p. 251.



subordinate itself to the other.\* The Dominions naturally desire to gain as much autonomy as possible while England equally desires to retain as much control over them as is compatible with Imperial unity. But setting up of a federal form of government will satisfy neither party.† Also the long distances that separate the members of the Empire make it physically impossible to set up in one place one legislature and one executive for more than four hundred million people inhabiting the different continents. There is not, therefore, the remotest possibility of establishing an Imperial federation for the British Empire. Prof. Dicey has clearly pointed out that to keep the unity of the Empire intact it is not at all necessary to establish a federal government for the whole.‡ At the Imperial War Confer-

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\* General Botha expressed his views thus : " If any real authority is to be vested in such an Imperial Council, I feel convinced that the self-governing powers of the various parts of the Empire must necessarily be encroached upon, and that would be a proposition which I am certain no Parliament in any part of the Empire will entertain for a moment.

If no real authority is to be given to such a Council, I fear very much it would only become a meddling body which will continually endeavour to interfere with the domestic concerns of the various parts of the Empire, and cause nothing but unpleasantness and friction, in fact, the very opposite of what we desire." *Ibid.* p. 299.

Mr. Asquith described the Imperial point of view in these words : " It would impair if not altogether destroy the authority of the Government of the United Kingdom in such grave matters as the conduct of foreign policy, the conclusion of treaties, the declaration and maintenance of peace, or the declaration of war and, indeed, all those relations with Foreign Powers, necessarily of the most delicate character, which are now in the hands of the Imperial Government, subject to its responsibility to the Imperial Parliament. That authority cannot be shared, and the co-existence side by side with the Cabinet of the United Kingdom of this body ..... would in our judgment, be absolutely fatal to our present system of responsible government." *Ibid.* p. 302.

† Prof. Dicey, discussing the problem of an Imperial Federation, remarks : " The present time, we must add, is intensely unfavourable to the creation of a new federalised and Imperial constitution." ' *Law of the Constitution*, Introduction, p. LXXXV.

‡ ' *Law of the Constitution*, Introduction, page LXXXVI.

ence of 1917 the resolution passed postponing the problem till the cessation of hostilities clearly indicated that the Dominions were not favouring the formation of an Imperial Federation. General Smuts, speaking in support of the resolution, said, "If this resolution is passed, then one possible solution is negatived, and that is the Federal solution. The idea of a future Imperial Parliament and a future Imperial Executive is negatived by implication by the terms of this Resolution."\*

It is easy to visualize the many difficulties, rather the impossibility, of an Imperial Federation. How would the many small British possessions scattered over the whole globe be governed if the self-governing dominions and India were to be placed on equal terms in the federation? Would England so easily renounce her sole right to these possessions for which her soldiers and sailors shed their blood and for the acquisition of which the other members have done absolutely nothing? To think of the possibility of such a great sacrifice on the part of England will only be over-estimating the generosity of human nature. How would the proportion of representation in the Common Legislature and Executive be determined? A population basis would only throw England into a most insignificant position. We may, therefore, easily rule out the possibility of an Imperial federation coming into being in the future.

Taking into account the various points so far dilated upon we come to the only feasible and the most practicable solution that the Empire will tend to become a group of nations, independent in all domestic concerns, all owing allegiance to a common monarch and deciding all common matters of defence, commerce and communications in joint free consultations. The periodical meetings of the Imperial Conference will remove all causes of complaint by harmoniz-

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\* Keith, 'Speeches and Documents on Colonial Policy,' Vol. II, page 395.

ing the views of the different members and thus enabling the British Cabinet to arrange its policy in foreign affairs. This arrangement is the natural sequence of the desire on the part of the dominions to enjoy the greatest amount of freedom in their local concerns and the privileged position of England which she has acquired after considerable sacrifice. It will not disturb the present position and status of the dominions in the League of Nations. It would, on the other hand, strengthen the position of the League by giving it the united support of an organization which has already achieved the ideal which the League is striving for.\* Further more such an arrangement, by recognising fullest autonomy of the Dominions, will drive away all fears of disintegration within the Empire. At present we may feel some pride in speaking of the Present state of the Empire as a Commonwealth of free nations but, as George Burton Adams has rightly pointed out, we have not yet reached that stage in which the members of the commonwealth share equal opportunities for development.† Such

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\* General Smuts in supporting the Resolution of the Imperial War Conference, above referred to, of 1917, spoke of the Empire in these terms :

"People talk about a League of nations and international government but the only successful experiment in international government that has ever been made is the British Empire, founded on principles which appeal to the highest political ideals of mankind. Founded on liberal principles, and principles of freedom and equality, it has continued to exist for a good time now, and our hope is that the basis may be so laid for the future that it may become an instrument for good, not only in the Empire but in the whole world."

'Speeches and Documents on Colonial Policy,' Vol. II, p. 393.

† "There is beginning a fashion of speaking of the British Commonwealth of Nations instead of the British Empire, but the new name denotes in international relations an aspiration for the future rather than something at present really true. So long as each nation is not allowed its proportionate share in making decisions, nothing exists which can be truly called a commonwealth of nations, nothing which is in any proper sense a federation."

'The British Empire and a League of Peace,' p. 7.

an ideal is also a national growth in the direction in which the politics of the Empire are at present moving. It will secure to the part the full benefits of joint action without in any way hindering their internal growth.

As for the whole world, we see federations multiplying day by day in every continent. Australia and almost the whole of North America have adopted federalism. Latin America is rapidly moving in that direction. South Africa already resembles a federation and East Africa may become one. In Europe Switzerland and Germany are federations while Soviet Russia may be called one at least in a loose sense of the word, while the prophecy of Bryce, "there is reason to think that within the next century some of the smaller states will have disappeared from the map of Europe,"\* still stands there. In Asia, too, India is most likely to become world's biggest federation in the near future and China may have to do the same. We may, therefore, safely agree with what Sidgwick said: "When we turn our gaze from the past to the future, an extension of federalism seems to me the most probable of the political prophecies relative to the form of Government."†

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\* *Constitutions*, p. 139.

† H. Sidgwick, 'The Development of European Polity,' p. 489.

## CHAPTER IV

### THE DISTRIBUTION OF POWERS

#### INTRODUCTORY.

It has been pointed out in Chapter I that one of the characteristics of federalism is the co-existence of two governments, each with its own specified sphere of administration. This necessarily involves the distribution of powers between these two governments—the Central or Federal Government and the State governments. This division of powers is, indeed, the very essential condition of a federal government whose formation is based upon this and this principle alone. For if any one of these governments be entirely vested with all the political authority there is at once established a unitary form of government and the necessity of a federal government is ruled out. And this division of powers—without involving a corresponding division of sovereignty which remains undivided in the people of the federation as a whole—sets limitations to the extent of jurisdiction of each government and prohibits the one to make encroachments upon the powers of the other.\*

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\* "The distribution of powers is an essential feature of federalism. The object for which a federal state is formed involves a division of authority between the national government and the separate States. The powers given to the nation form in effect so many limitations upon the authority of the separate States, and as it is not intended that the central government should have the opportunity of encroaching upon the rights retained by the States, its sphere of action necessarily becomes the object of rigorous definition."

Dicey. 'Law of the Constitution,' p. 147.

This division of powers is essentially different from the separation of powers in any government—the division of Legislative, Executive and Judicial functions—although this latter division is also essential in a federal government for more solid reasons than in a unitary government. We shall discuss both these divisions in this chapter in so far as they relate to the fundamental principles of federalism.

(A) *Division of Powers between Federal and State Governments.*

What is the basis of the division of powers between the Federal government and the State governments in a federation? What are the principles which determine this division? And lastly, what is the extent to which this division is carried out? These are the questions which suggest themselves at the very outset of our enquiry into this subject.

As we have indicated in the first chapter there are two forces which tend towards the formation of federations—the centripetal force and the centrifugal force. It is only when either (1) a number of smaller and independent states living side by side, or (ii) a big state extending over a wide area, find it difficult to carry on the governmental machinery smoothly, effectively and efficiently, that the necessity of establishing a federation becomes manifest. So that the ways in which federations are formed are (a) the centralising of certain specified powers by the smaller states into the hands of the newly formed central or federal government, and (b) the decentralising of some powers, in a big state, by the state itself into the hands of the several governments set up over the many states or provinces into which that big state may be parcelled out. This is, in short, the basis of the division of powers in a federation.

And as the basis of the division of powers is of a dual character so are the principles which guide this division. When the states are compelled to create a central government over and above themselves they often take good care to assign powers to the new government within specified limits only. Such was the case in the pre-War Austro-Hungarian or the German Empire, the Confederacy of the United States of America, and also the Commonwealth of Australia. But in cases where the decentralising force creates a federation the states are not allowed great powers as was the case in Canada when the federal Dominion was formed in 1867. But this should not be construed as a hard and fast rule, for in the case of the Union of South Africa the several colonies, for the time being, disregarded their independent existence and set up an authority over themselves, having so large powers as to leave to the states practically no semblance of independence. Thus in a federation there may be one of the two cases, viz. either the central government may possess greater powers than the provincial or state governments or the vice versa. To decide this distribution of powers either the powers of one authority may be defined leaving the undefined and unenumerated powers to be exercised by the other authority, or there may be enumeration of the powers assigned to each. But in politics there can be no rigid walls interposed between the powers of two authorities and, in fact, questions frequently arise about the power which it is very difficult to assign to one authority without a protest from the other. This difficulty is met with in one of two ways, viz. either the constitution reserves the residuary powers to be exercised by one of the authorities clearly mentioned, or it empowers both the governments to exercise co-ordinate authority in those matters. In the latter case, whenever conflicts arise due to simultaneous exercise of authority by federal as well as the state governments the orders of one of them, more often

those of the federal, are given priority over those of the other. And this fact is also specifically indicated in the constitution.

All this goes to show that the division of powers between the federal government and the various state governments in a federation is dictated by the special circumstances of the country. But the broad fact remains that naturally those powers are assigned to the state governments, which vitally affect the life of the inhabitants and allow development of the country in accordance with the local conditions of the states, while matters concerning the country as a whole are assigned to the central government. But an apparently similar sort of division also takes place in all unitary governments in which are set up what are called local or municipal governments vested with the exercise of powers vitally affecting the daily life of the people. How and in what manner, therefore, are these divisions of powers between the federal and state governments in a federation on the one hand, and between the central government and local or municipal authorities in all forms of governments on the other, to be distinguished and differentiated from each other? Does the division follow the same lines, and does it set up similar authorities in the two cases? If not, where does the chief difference lie? These questions may be answered briefly. The division of powers in these two cases is fundamentally different, and the two authorities in the one case are absolutely dissimilar from those set up in the other case. In a federation both the federal government and the state governments derive their authority from the people and the fundamental constitution, and are absolutely independent of each other, neither of them being legally authorised within the meaning and purpose of the constitution to encroach upon the authority of the other or to destroy it by its force. But each is supreme within the sphere allotted to it.\* But in the,

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G.B. Adams, 'The British Empire and a League of Peace etc.,' p. 76,



other case the central government, in order to decentralise its activity and to provide for a more efficient administration, sets up by its own authority and without the interference of any outside body local functionaries or municipalities within the country and these are entirely dependent for their existence and extent of authority upon the will of the former. Again the orders and laws of a provincial or state government in a federation have the full force of laws irrevocable by the central government, so long as they are confined within the limits assigned by the constitution, and therefore the state government is supreme within its own sphere of authority. But the orders of a local or municipal government are in the nature of by-laws depending for their validity upon not only the charter or act under which it is established but also upon the sanction of the central government, in as much as these orders may be entirely suspended or partially amended by the latter which can even wipe off its existence by withdrawing the charter or the act establishing that authority, without committing any illegal or unconstitutional action. Clearly, therefore, the powers of a state government in a federation are very much wider than those of a local or municipal authority in a unitary government and are as much binding upon the citizens as those of the federal government. To take an example, the charter establishing a municipality or county council in England may be entirely withdrawn or that subordinate authority may be suspended for such time as is seen proper by Parliament without in any way infringing the constitution; but the authority of the government of New South Wales in Australia cannot be curtailed or interfered with by the government at Canberra, without infringing the Constitution of the Commonwealth of Australia, which infringement will be invalid and unconstitutional and the aggrieved government will have every right to get amends for the injury done.

Having stated the principles as well as the nature of the division of powers between the federal government and the state governments in a federation, we now propose to indicate the extent of this delimitation of powers.

(a) *Powers of the Federal Government in a Federation.*

There are certain functions of government which, in a federation, are and ought to be exclusively within the powers of the Federal government. Such functions, by their very nature, cover the entire territory of the federation and apply equally to all the member states or provinces, or are such as can be better administered by the common authority than by separate states. The first and foremost of these is foreign affairs. In all international affairs the federation appears as one and not as so many individual states, hence the federal government acts on behalf of the whole federation. To allow the different states an independent voice in foreign affairs will surely cut at the root of national unity and will thwart the very purposes for which federalism is applied to solve the problem of the country. History affords no example of any confederacy or federation in which foreign affairs were left to the care of the different member states. Even in the loose confederacy, the pre-war Austro-Hungarian Empire, foreign affairs were one of the three subjects of common administration. And at present even the British Empire is one unit in international affairs. True, there are cases wherein a federal government has allowed the individual states to enter into commercial treaties with their neighbouring states, but such treaties were not to prejudice the interests of other states of the union nor were they to be concluded without the sanction of the federal government. Closely connected with this is the question of the control of the land, naval and air forces. The power of controlling the military forces of the union must of necessity belong to the federal government. It is this control, which, in reality, enables the federal government to appear as a

strong entity in foreign affairs or which keeps the existence of the union safe. No federal government can take the responsibility of dealing with foreign powers without the strength to enforce its will, nor can it entrust control over these forces to the individual provinces without jeopardising its own safety. What would have been the result if each state of U. S. A. had control over its forces before the War of Secession? Or what again would have been the subsequent history of Swiss confederacy if before the Sonderbund each canton had its own independent army? The dangers of allowing separate military camps, for so they would really appear, to exist within a confederation or union can better be imagined than described. Could the central government exercise its authority over the states without having any strength behind it? In Australia the Federal Council established in 1885 had no executive power to raise and keep any army and it was this weakness in the composition of that body because of which it failed to give the Australians necessary protection against the fear of foreign aggression. In all medieval and modern confederacies and federations these two subjects, foreign affairs and army with its various branches, have been placed within the jurisdiction of the federal government.\* Not to do so would have been like the erection of an engine minus the driving force or energy, with the inevitable result that it would have been worse than useless.

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\* Foreign affairs, include also the appointment of ambassadors at foreign courts and receiving of foreign ambassadors, the declaration of war and the making of peace.

In the German Empire some of the bigger states had control over their own militia but they had also to observe uniformity of training and had to place their soldiers at the disposal of the Empire in case of necessity. This was possible in a confederation in which the members were princes unwilling to lose the semblance of their royalty, but the actual working was not very much in conflict with the ideal of union between the several states.

Also in the United States of America each state has its local Militia to be put at the disposal of the Federal Government when necessary.

Next in point of importance is the question of those services which embrace the whole country and not only bring considerable revenue into the central exchequer but also enable the federal government to make its authority felt by all citizens. These are the postal, telegraph and telephone services which are wisely assigned to the control of the federal authority. To entrust these to the individual provinces would mean unnecessary multiplication of authorities, creation of inconvenient diversities and increase of the chances of friction. No federation has, therefore, assigned these to provincial or state governments. Closely connected and of equal importance is the commercial question which includes the means of transport and communications. It has been pointed out in a preceding chapter how financial gain by creating opportunities for bigger markets, uniform trade laws, uniform coinage, weights and measures has helped neighbouring states to unite together. The makers of all modern federations were alive to the increasing commercial advantages which were to accrue to them from the union. For this reason in all federal constitutions we find these subjects assigned to the federal government. As a necessary corollary, banking, and bankruptcy and insolvency laws are the subjects of federal administration. Similar is the question of all means of transport, the commercial veins and arteries of the country, railways, mercantile marine and trunk roads. To entrust their control to the federal government is essential to the speedy development of interstate commerce. For the same reason foreign trade and fisheries, except near the coast, are better administered by the federal authority for the whole country than by the various provinces severally. A big state is always in a better position to secure best commercial advantages by entering into commercial treaties and fiscal arrangements with foreign nations than a small state. Analogous to these questions are patents, copyrights and designs. A central

authority is better placed to safeguard the interests of authors, inventors and discoverers, and therefore these subjects are placed in its hands.

No less important is the composition of population *vis-a-vis* the society of the whole federation. To legislate for naturalisation and also to take care of aliens is one of the most important duties of a government. Therefore these subjects are generally assigned to be exercised by the federal government, which establishes uniformity within the whole of its territory. In the United States of America Abraham Lincoln had to declare war against the Southern States to emancipate the slave population.\* Therefore it is very necessary that this question be transferred to the jurisdiction of the federal government. Before the establishment of the South African Union the various colonies dealt with the native and foreign populations in the manner they liked with the result that there were serious differences in the policies pursued by the various colonial governments in the treatment of the non-white population. This created a very unhappy situation, particularly in the treatment of the Asiatics. But since the colonies united the basic principle of the policy regarding the native or non-white population is determined by the Governor-General in Council. Religion, too, comes within the region of federal jurisdiction and in this connection the War of the Sonderbund is a great eye-opener to all those who might be interested in the making or studying of federal constitutions. It is the federal government alone which is most competent to establish religious toleration or equality and thus help the growth of peaceful community. But all countries do not have the same complications of the composition of society and populations and this is why there can be no general principles to determine the way in which this question can be solved.

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\* But this is a special case of the people in power denying equal rights to those of their fellow men who were weak.

To discharge its duties every government requires large sources of income, the power to impose taxation, and also to borrow money on the credit of the country. This, in a federation, necessitates the assigning of necessary powers to the federal government, including the control over the property of the country, control of public debt and the establishment of banks and mints.

These are, in short, some of the powers that are given to the federal government in a federation. All modern federations, U. S. A., Switzerland, Australia, Canada and the German Republic have generally assigned them to the federal government. But the list is neither exhaustive nor it could be made so. No two countries are similar in their internal problems much less so federations in which the problem is always hydra headed. Consequently no rules can possibly be prescribed to guide the distribution of powers between the federal government and the state governments. The history, environments, and conditions of different countries essentially differ; moreover the development of science followed by new discoveries and inventions is bringing new problems to light. This further complicates the task of laying down specific lines of division between the authorities of the two kinds of governments. We can at best enunciate certain general principles which may be taken as a guide to tackle this problem. It may be mentioned here that the greatest controversy between the federal government and the state governments arises over this question of the distribution of powers between them.

The case of the Union of South Africa is quite different from that of other federations. Here almost all governmental powers are reserved to the Union Government and very little is left to the provincial governments to do in the sphere of administration. Article 59 of the Constitution clearly lays down: "Parliament shall have full power to make laws for the peace, order, and good government of the

Union." The Governor-General of the Union has full powers to veto the measures passed by the provincial legislatures. He also appoints the provincial heads who are called administrators.

The German Republic is the most recent example of a true federation formed after the War. Its constitution is very novel in several respects. The authors have introduced a peculiar device to control labour and commerce by the federal government. It has (i) sole legislative power over some subjects enumerated in Article 6, (ii) it also legislates for some other matters defined in Article 7, and (iii) it may also draw up regulations for many more subjects included in Articles 10 and 11. But, except in case of subjects defined in Article 6, the state governments, when the federal government is not exercising its authority, generally legislate. So that the Germans have given very considerable legislative powers to the federal government without, of course, giving equal executive powers which are confined necessarily to the subjects over which it has sole legislative authority.

#### *(a) Powers of State Governments.*

Every country has its central government armed with full powers to maintain its entity both as regards its internal as well as its external sovereignty. But for the sake of practical administration some powers have to be delegated or decentralised to local or provincial bodies. In a unitary government these powers are merely delegated but in the case of a federation they are irrevocably assigned to state or provincial governments. It is here that a federal constitution essentially differs from a unitary one. It is this feature which makes the federal constitution unique in its nature as well as operation. In a federation the citizen of a state or province is more intimately concerned with the administration of his state government than with the federal govern-

ment, because the powers of the former, from their very nature, affect his daily life more closely than those of the latter. He is, therefore, naturally anxious, moved as he is by the sentiments of his warm state patriotism, to get as much power for his state as he possibly can. But in this desire he is bound by the process in which the federal tie is brought to bear upon the assigning of the powers between the federal government and the state government.

In certain cases the provinces or states enjoy the very limited powers which are definitely assigned to them by the constitution, all others being reserved to the federal government. In other cases the provinces enjoy very large powers which the constitution reserves to them after assigning some definitely specified ones to the federal authority. In the former case, the chief examples of which are afforded by the Union of South Africa and the Dominion of Canada, the polity tends more towards a unitary state. This may also be said of Republican Germany where there is very great legislative centralisation with executive decentralisation. But in the other case, as we see in the U. S. A., Switzerland and Australia, the polity is more closely of a federal form.

Section 85 of the Act of Parliament ( 9 Edw. VII. cap. 7. 20 September, 1909 ) establishing the Union of South Africa defines the limited powers which have been assigned to the provinces. It runs: "Subject to the provisions of this Act and the assent of the Governor-General in Council as hereinafter provided, the provincial council may make ordinances in relation to matters coming within the following classes of subjects ( that is to say ) :

- ( i ) Direct taxation within the province in order to raise a revenue for provincial purposes ;
- ( ii ) The borrowing of money on the sole credit of the province with the consent of the Governor-



General in Council in accordance with regulations to be framed by Parliament ;

- (iii) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides;
- (iv) Agriculture to the extent and subject to the conditions to be defined by Parliament;
- (v) The establishment, maintenance, and management of hospitals and charitable institutions ;
- (vi) Municipal institutions, divisional councils, and other local institutions of a similar nature ;
- (vii) Local works and undertakings within the province, other than railways and harbours and other such works as extend beyond the borders of the province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the provincial council or otherwise ;
- (viii) Roads, outspans, ponts, and bridges, connecting two provinces ;
- (ix) Markets and pounds ;
- (x) Fish and game preservation ;
- (xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated in the section ;
- (xii) Generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province ;

(xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the provincial council.\*

The next Section 86 puts further limits to provincial powers by clearly laying down that "Any ordinance made by a provincial council shall have effect in and for the province as long and as far only as it is not repugnant to any Act of Parliament."† We thus see that although the powers of provinces in South Africa are wider in range and application than those of a municipal or local authority in a unitary government they are very much limited in scope and do not leave to them any great measure of independence which is the essential feature of a federal constitution. Sir Frederick Whyte remarks: "The provinces as now constituted are in fact bound hand and foot to the chariot wheels of the Union ...."‡

In the Dominion of Canada too the provinces have limited powers which have been definitely assigned to them by the British North America Act (30 Vict. cap. 3. 29 March, 1867). Section 92 of the Act says: "In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of Subjects next herein-after enumerated; that is to say:—

1. The Amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of money on the sole credit of the Province.

\* Newton. 'Federal and Unified Constitutions,' pp. 382-383.

† Ibid. p. 383.

‡ 'India A Federation?', p. 163.

4. The Establishment and Tenure of Provincial Offices and the Appointment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Provinces and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioner, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
  - a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
  - b. Lines of Steam Ships between the Province and any *British* or Foreign Country:
  - c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of *Canada* to be for the general Administration of *Canada* or for the Advantage of two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province."

These powers are, no doubt, wider than those assigned to the South African Provinces but they have been limited in operation by the provisions of sections 58-60 which leave the appointment of the Provincial Lieutenant Governors to the Governor-General of Canada. This subordinates the provinces to the superior authority of the Dominion, which fact is further corroborated by the method of appointment of the provincial representatives to the Senate of Canada, a subject to which we shall revert presently.

Then comes the case of federations wherein the constitution delimits the powers of the federal government and gives wider powers to the states or provinces than we have seen in the cases cited above. These are the United States of America, Switzerland, and the Commonwealth of Australia. Before the United States actually federated in 1787 they had a loose Confederacy in which the States asserted their right of full sovereignty which, as they declared, they had acquired on renouncing their allegiance to the British throne. The exponents of the State rights came to be known as the Republicans. Their opponents, the Federalists, among them Hamilton, Jay and Madison,

carried on an intensive propaganda through the 'Federalist' in support of the federal government. In these circumstances the compromise made strictly delimited the powers of the federal government, leaving a wide scope of powers to the States themselves. The Constitution of the United States, perhaps the briefest of all modern constitutions, specifically defines what powers are reserved to the federal authority. It is for this reason that each State in the U. S. A. has control over "law and order, civil law, criminal law, local government, education, public health, the raising of the militia, and the general police power."\* This is a very wide range of powers which leaves very little scope for interference by the federal authorities. True, the subsequent judgments pronounced by the judges of the Supreme Court have considerably enhanced the authority and powers of the federal government by their own interpretation of the Constitution. It is no wonder that in 1787, when science had not made great changes in the lives of peoples, the constitution makers of U. S. A. had not many points to settle, also they had purposely avoided crossing controversial grounds for fear of fatally injuring the federal cause. They, therefore, strictly prescribed the limited powers which the States reluctantly and jealously assigned to the Federal Government. Lord Bryce has very pointedly remarked: "The powers vested in each State are all of them original and inherent powers, which belonged to the State before it entered the Union. Hence they are *prima facie* unlimited, and if a question arises as to any particular power, it is presumed to be enjoyed by the State, unless it can be shown to have been taken away by the Federal Constitution; or, in other words, a State is not deemed to be subject to any restriction which the Constitution has not distinctly imposed. The powers granted to the National government are delegated powers, enumerated in and

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\* Sir Frederick Whyte, 'India A Federation?', pp. 67-68.

defined by the instrument which has created the Union. Hence the rule that when a question arises whether the National government possesses a particular power, proof must be given that the power was positively granted. If not granted, it is not possessed, because the Union is an artificial creation, whose government can have nothing but what the people have by the Constitution conferred. The presumption is therefore against the national government in such a case, just as it is for the State in a like case.”\*

The constitution makers of Switzerland, guided very much by what the Americans had done six decades before, limited the powers of the federal government, leaving a very wide range of powers to the Cantons themselves. In this sense the Cantons very much approach the position occupied by the States in U. S. A.† The Cantons have full powers over poor relief, labour legislation, public health, hospitals, insane asylums and sanitariums, agriculture, industry, education and religion.‡ They have a very wide power of cantonal taxation. But what is most characteristic of their powers is the right to conclude ‘Concordats’ or commercial treaties among themselves, but these have to be reported to the Federal Government for information. §

The Commonwealth of Australia Act (63 and 64 Vict. cap. 12, 9 July, 1900) passed at a time when the Australians had before them the experience of U. S. A. and Canada gives a long range of powers to the States. It follows almost a middle course between these two countries and is, to a great extent, free from the defects inherent in their

\* Quoted by Sir Frederick Whyte in ‘Indian A Federation ?,’ p. 68.

† Bryce. ‘American Commonwealth,’ Ed. 1910, vol. 1, p. 413.

‡ The religious autonomy or freedom came to the Cantons as a result of the Sonderbund. It was this religious trouble which at one time threatened the very existence of the Swiss federation.

§ Brooks. ‘Governments and Politics of Switzerland,’ pp. 342-343.

constitutions. Before the States federated they were independent in their internal affairs. Therefore they delegated only those powers which they thought very necessary for common action. Their constitutions, as they stood before 1900, retained their original character even after the federation except in so far as they were affected by the assigning of some powers to the Commonwealth Government.

This, in short, is the division of powers between the federal governments and state governments in modern federations. The diversity is mainly ascribable to two reasons, (i) the different or dissimilar conditions of the countries, and (ii) the circumstances under which federations were formed. Where the fear of external attacks has been great or where the federation was a result of centralising tendencies the powers of the federal government were wide. On the other hand, where no such fear was in existence but the federation came by slow degrees, the idea proceeding from the states themselves, the latter have jealousy guarded their *status quo* at the time of union and have given only minimum powers to be exercised by the federal government.

(c) *The Residuary Powers in a Federation.*

The most important part of the distribution of powers in federations is the location of the residuary or undefined powers. Even the greatest amount of precision with which the powers be divided between the federal government and the state governments cannot succeed in assigning all the powers which a government is capable of exercising. It is for this reason that the necessity of locating the residuary powers in a federation becomes paramount in the framing of a federal constitution. This is done either by locating them in one of the two governments, the federal and the provincial, or by giving them both concurrent powers. In U. S. A., Switzerland and Australia the residuary powers are assigned to the state governments, whereas in Canada

and South Africa they are within the jurisdiction of the central government. The case of Republican Germany is clearly indicated by centralising the sole legislative powers in some matters but making it optional in others, but allowing the states the execution of even the federal legislative measures. This is provided for by Article 14 of the Constitution, but Article 13 stipulates that "Federal law overrides State Law." This is also the case in the Australian Commonwealth. But in almost all federations, wherever this concurrent power has been given, it is definitely laid down that in case of conflict between the federal government and the state government over the exercise of concurrent powers the federal or central government will have the decisive voice. And this is also a very necessary condition if the federal polity is to last and is not to be made extinct by the opposition of the states of which it is composed.

(B) *The Separation of Powers in a Federation.*

Here we are concerned with the separation of powers in the Federal or Central Government in a federation and not with that in the provincial or state governments. In classic theory if the powers of making laws, executing them and also interpreting or punishing their violation are combined in the same person or body of persons there can be no guarantee of freedom to the citizens. To do so is to

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\* Article 15 of the German Constitution says : " . . . . . In so far as Federal laws are carried into execution by State authorities, the Federal Government may issue general instructions. For the purpose of supervision of Federal law, the Government is empowered to despatch commissioners to the State central authorities, and, with their consent, to the subordinate authorities, it is the duty of the State Governments, at the request of the Federal Government, to remedy defects observed in the execution of Federal laws. In case of differences of opinion, both the Federal Government and the State Government may appeal to the decision of the Supreme Court of Judicature, where no other court has been determined by Federal law."

A. P. Newton. 'Federal and Unified Constitutions,' p. 412.



sow the seed of tyranny. It is chiefly for this reason that in the United States of America the legislature, executive and judiciary are separate from each other, no one encroaching upon the work of the other. And if this separation of functions was necessary in any form of polity it was much more so in the case of a federation where the problem is not only one between one individual and another but that between one state and another or between one government and another. In the case of a federation it was thought the compromise—the basis of that polity—cannot last even a twelve month if these functions are not separated from each other. Of course, now a days the separation of powers is not based on the classic theory which was based on special circumstances then prevailing in U. S. A., but it is done for the sake of convenience. Only the judiciary is now entirely separate from and independent of the legislature or the executive.

(a) *The Federal Legislature.*

The legislature of a federal or central government has limited scope of legislation confined as it is within the allotted sphere of action. It cannot go beyond that, for if it does so it violates the constitution which brought it into existence. Clearly, therefore, a federal legislature is not an all supreme legislative body. But what is of importance in the composition of a federal legislature is the form it should take. Should it be unicameral or bicameral? It has become almost a fashion for those who have any connection with constitution-making to establish a bicameral legislature. We are concerned with this question primarily from the federal point of view, but the other aspects of it are not entirely unrelated to it. The grounds in favour of this system, as advanced by them, are that it creates an upper chamber which (i) can restrain hasty legislation, and (ii) can amend obnoxious measures. In the first case,

if the upper house frequently exercises its restraining influence, it defeats the chief purpose for which the lower house is created, *viz.* to give the people as a whole the decisive voice in the work of legislation. What use is there in creating a popular house when its decisions are upset by another less popular or representing persons different from the people at large? And in the latter case the bicameralists presume that all talent, wisdom, and cautiousness are solely vested in the upper house as if the members of the lower house are devoid of these qualities. But what is the verdict of experience, the oracle of wisdom? It tells quite a different tale. In all civilised countries with the exception of U.S.A. the lower house is more powerful than the Upper house. The former, almost without exception, attracts to itself the best brains of the nation. It holds the strings of the nation's purse in its hands; it mirrors the real will of the people and approaches the ideal of democracy much more than the upper house. Examples are wanting to demonstrate that if the lower house has been allowed to legislate unchecked by the upper house grave national wrongs have been done or catrastrophes precipitated.

Let us dispassionately examine the necessity for an upper house. If it is also a purely elected popular chamber returned by the same voters as the lower house, as is the case in the Australian Commonwealth, it is an unnecessary duplication of the same machinery. But if it is elected on a narrow franchise it runs counter to the true spirit of democratic institutions. If it is a nominated body, the device only puts greater legislative power in the hands of the nominating body. If it is an hereditary institution, it incorrectly assumes that legislative talent is something which can be inherited or bequathed. And if it is composed of representatives of professions it is impossible to apportion the membership between one profession and another by adjudging their relative importance.

There is another aspect, too, of this problem, viz. the respective powers of the two houses. If they are equal, bicameralism is worse than unnecessary; if unequal, then the house possessing greater or over-riding authority makes the other house nugatory. All this shows that bicameral legislatures are unnecessary in democratic governments. But there are some useful purposes which they serve. Generally all upper houses are smaller than lower houses, the only exception being the English House of Peers. So that in the upper house there is less pandemonium and greater chance of reasoning and argumentation on a legislative measure, where men of different parties can get more time to ventilate their views. Such is the case in U. S. A. Canada, and Australia. This is surely a great advantage of an upper house, and an argument in favour of its creation or retention. But cannot the same advantage be secured in a unicameral legislature by some sort of legislative device? We find that the committee system of legislation is increasing in all legislatures. By forming small committees, composed of members of all important parties, to examine and report on the legislative measures before the house we can better provide for a full debate on the measures. And as the small committees hold their sittings in camera members will more freely express their real opinions which they would not do easily in a place where they are listened to by the people at large. This system insures amending of a measure as well as checking of the haste with which a measure may be hurried through the house. And when it is coupled with the provision for the circulation of all important legislation to elicit public opinion the advantages of an upper house are, with interest, obtained even in a single chamber. But it provides another advantage which an upper house does not possess. By taking into confidence the prominent members of the opposition before the stage of final legislation is reached the party in power minimises the

opposition with which the measure is likely to be received in the house. However, assuming that even after taking all these steps a measure is passed by the lower house which is hasty and is detrimental to the best interests of the state and which would have been rejected or radically amended by the upper house, if in existence, there is another simple device by which the injury can be avoided. And that is the executive. If the executive is formed out of the party in power and a measure has emanated from it then, in case of rejection by the upper house, the executive often dissolves the legislature to take the verdict of the nation. Or if the legislation is in conflict with the policy of the executive, the latter may again dissolve the house when the legislature is unicameral. But this is applicable only to the case of a responsible executive. In countries where the executive is not responsible to the legislature as in the U. S. A. and Switzerland it can easily exercise the power of veto over the measure passed by the single chamber, if it disapproves of it.

All this goes to show that a bicameral legislature is not an absolutely essential condition for healthy and useful legislation. Where the legislature is only unicameral the work of revising as well as of resisting legislation can be performed in other ways, and we do really find that in most of the provinces of Canada, South Africa, in most of the cantons of Switzerland, and in some of the States of U. S. A. and Australia there are unicameral legislatures all working fairly well. And if there are examples of unicameral legislatures replaced by bicameral legislatures there are also examples to show the contrary. And if the upper houses have proved useful they are also being looked upon with distrust and are being slowly deprived of much of their power. The British Parliament Act of 1911 is sufficient to show the existence of this tendency.

But the apologists of bicameral legislatures say that upper houses are unavoidably necessary in federal constitutions. The chief argument advanced is that the composition of the upper house affords equality of status to all the states of the federation, big as well as small alike, and thus this house remains the sheet-anchor or the custodian and protector of state rights. Without the upper house, it is asserted, the small states in the federation will be out-voted by the bigger ones in the lower house and in this way equal status of all states, the fundamental principle of federalism, will be violated. It must be frankly admitted that at the federative stage, no doubt, in all federations the states insisted on the establishment of the upper house on the principle of equality. And this principle has been practically incorporated in all modern federal constitutions. It will be of significance here to discuss how far their apprehensions were true and how far their expectations have been fulfilled by the creation of upper houses.

We shall take here the three examples of the U. S. A., Canada and Australia. Each of the 48 states of the U. S. A. has two Senators in the Senate, making a total of 96. Formerly they were elected by the legislatures of the respective states but since 1913 they are directly elected by the people of the states. In addition to being a revising legislative house, the Senate has also some judicial authority.\* It also acts as an important branch of the executive by making it obligatory on the President to consult it in important matters particularly foreign affairs. In Canada each of the four sections, *viz.* Province of Quebec, Province of Ontario, the Maritime Provinces, and the Western Provinces, has 24 Senators, making a total of 96; each of the four maritime Provinces having 6 a piece and each of the

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\* Section III of Article I of the Constitution of the U. S. A. says : "The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation."

Newton, 'Federal and Unified constitutions,' p. 82.

2 Western Provinces 12 a piece. The Canadian Senators are nominated for life by the Governor General in Council, *i. e.* by the party in power in the lower house at the time of a vacancy. But in the U. S. A. one-third of the Senators retire after every two years, therefore the Senate always contains two-thirds of old members. In Australia the six states have six Senators a piece, making a total of 36, one half of them retiring every three years. They are elected by the respective states, the whole state territory taken as one constituency. Only in case of dissolution, when there is a deadlock between the two houses is the senate entirely elected at one time. In each of these three federations the provinces or states before federating insisted on the recognition of equality of all states by giving them equal representation in the upper house. They expected that the Senators from a state would always try to safeguard the state rights.\* But the actual working of the Senate has falsified these vain hopes. In U. S. A. at the time of general election and also in the process of legislation the Senators work on party lines, forgetting the state from which they are elected, and consider themselves only as Republicans or Democrats. The two Senators of no state vote alike if they happen to belong to the different political parties. Similarly in Canada they vote as liberals and conservatives, and not as the representatives of the Province of Quebec or the Province of Ontario. The same is the case in Australia where they vote on definite party lines. True, in the Old German Empire the members of the Bundesrath voted statewise, all members from one state voting alike as instructed by their state government. In

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\*How erroneous was the idea that the central legislature would have many matters in which the states would form different parties. In federations all affairs affecting the interests of the states are left within the competence of the state Government. So that equal representation in one branch of the federal legislature was not so important as the acquiring control over some subjects of administration.

this sense the Bundesrath was more an assembly of state delegates or ambassadors than an upper house of state representatives. So that in comparison with the three federations mentioned above the Bundesrath mirrored the state views and safe-guarded state rights in a much better way. But even there the 17 negative votes of Prussia vetoed a measure and the status of state equality was no more recognised in actual practice. We, therefore, clearly see that the party system of government in modern federations does not recognise the existence of state rights as contradistinguished from national rights, and that even in their upper houses of legislatures party lines cross state boundaries. In fact these upper houses of federal legislatures have ceased to be the sheet-anchor or the protector of state rights as was anticipated by the states when they went into federation. The truth is that what falsely appeared to them to be the bulwark of their rights has proved to be a mere phantom and by appeasing their sentiments has done them no special good, as no such occasion has arisen.

But it must be admitted that in federations composed of small as well as big states there must be some provisions in the constitution for safeguarding the state rights. This may be done either (i) by giving the small states representation in the federal legislature, which may be unicameral, in excess of their population without, of course, not very materially affecting the representation of big states, or (ii) by giving them judicial protection against undue encroachment on their rights, and this is surely in operation in the Supreme Courts of all federations, or (iii) by making some provision for the inclusion of their representatives in the executive itself.\* But to establish an upper house of legislature for this purpose is only useless and unnecessary

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\* This device is actually in practice in Canada. Speaking of this Mackay says: "Similarly the Cabinet is always a federal body. It would be almost as unconstitutional for a Prime Minister to compose a Cabinet

as it has so far failed to give any such protection, as no such necessity arose.

Space does not permit a fuller treatment of the upper houses in all federations, but to make the subject more clear we need take the Senate of Canada which follows a middle course between being a purely hereditary and an entirely elected upper house. Although the French Canadians of Quebec look upon it as the true guardian of their rights and they would not assent to its modification\*—certainly not to its total abolition—the Senate has never been given the opportunity to discuss their provincial rights. In fact the only measures which it ever thought fit to amend were those that concerned the Dominion as a whole. It has never attracted the aspirations of politicians in the prime of their life during which period they had always preferred to go to the lower house. The Senate has often been derided as the 'Home for the Aged' and it has never satisfied the reformers or the political enthusiasts by its unwillingness to do anything which they wished it to do.†

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of representatives from a single province or a single section of the Dominion as it would be to remain in office after a vote of want of confidence in the Commons." 'The Unreformed Senate of Canada,' p. 76.

"A Prime Minister has been able to maintain the principle of federal or sectional representation in his Cabinet without weakening seriously the quality of its membership." Ibid. p. 176.

\* "Plans to mend or end the Senate of Canada are confronted by the problem of securing the consent of the minority. The people of the province of Quebec are suspicious of constitutional changes which may imperil their own cherished political ideals.....No Government could long endure in Canada which was open to the charge of violating the fundamental agreement on which the union is based."

Mackay. 'The Unreformed Senate of Canada.' Introduction. By G. M. Wrong. p. XV.

†In the year 1920 the Senate of Canada composed of Senators among whom :

|                               |   |      |    |       |     |       |    |        |  |
|-------------------------------|---|------|----|-------|-----|-------|----|--------|--|
| 1 were under 50 years of age. |   |      |    |       |     |       |    |        |  |
| 23                            | " | over | 50 | years | but | under | 60 | years. |  |
| 40                            | " | "    | 60 | "     | "   | "     | 70 | "      |  |
| 16                            | " | "    | 70 | "     | "   | "     | 80 | "      |  |
| 5                             | " | "    | 80 | "     | "   | "     | "  | "      |  |



It has often served the purpose of a political reservoir for the ministerial favourites, to which the Cabinet has, whenever a vacancy occurred, translated those persons who had contributed to its party funds or were useful to it in several other ways.\* But it is the House of Representatives where the chief measures are enacted and the real legislation done. Therefore, if it is ever intended to safeguard the state rights it ought to be tried in the lower house where the real battle is fought.†

But at the time of federation the Senate was considered by the smaller provinces their true guardian. The debates

Mackay. 'The Unreformed Senate of Canada,' p. 191.

"While the work of revision is not usually strenuous, and even old men may perform this duty admirably, the presence of so many old men and the absence of young ones, together with the high average age, is a serious psychological defect." Ibid.

"If a bill for social or moral reform is rejected the Senate is attacked from end to end of the country by impatient reformers and condemned as an immoral, reactionary, and autocratic body.....Of late years it has become the fashion to attack the Senate as the foe of public ownership because it has interfered with several bills for the construction of railways by the Dominion. The Senate as a 'Home for the Aged,' as a refuge for old warriors and as a means of rewarding contributors to the party war chest, is the continual butt of newspaper wits. And yet, for all its unpopularity, the Senate continues on its dignified way, little changed from what it was half a century ago." Ibid p. 1.

\*Mr. Goldwin Smith wrote in the 'The Bystander' (Toronto) 1888. "The Senate is a bribery fund in the hands of the Government, and paddock for the 'Old Wheel Horse' of the party, nor, on its present footing, will it be anything else.....A Minister cannot help himself, the goods in the shape of party services and expenditures on elections have been delivered, and he is compelled to pay." Quoted, Ibid, p. 173.

† "It is on the floor of the Commons that the part of the political drama which the public sees is played. It is there that the never-ending battle between the 'Ins' and the 'Outs' goes on. The whole romance of politics during the interval between the elections centres in the Commons. The Senate on the other hand, is but the ante-room to the political stage. In the Commons, too, all party measures are introduced; by the time these reach the Senate the public is surfeited and gladly turns to fresh matters of interest. Moreover the purse strings are held in the Commons." Ibid, p. 73.

in the Quebec Conference (1864) clearly indicated how state particularism was in the ascendancy. Although Mr. Alexander Mackenzie pressed his views\* for a unicameral legislature his opponent Mr. Macdonald, carried his point in favour of creating a Senate.† And it was this compromise of establishing an upper house of legislature which obtained the sanction of the representatives of smaller provinces to the formation of the federation,‡ and enabled the Quebec Conference to arrive at a final decision.

(b) *The Federal Executive.*

The part which the executive plays in the government of a country is of supreme importance. It is not sufficient only to ensure good legislation, for laws may be good but the way in which they are executed can very easily defeat the purpose of good legislation. This is why despotism is always looked upon with abhorrence and the polity which does not provide for proper execution of laws defeats the ideal of democracy. Truly has it been said that 'the exercise of authority is surrounded by a penumbra of anarchy'.§ Evidently, therefore, political contentment depends on the exercise of control over the administration under which men live.

But the necessity of having proper form of executive authority in a federation becomes greater, in view of the

\* "In the whole debate in the Parliament of Canada Alexander Mackenzie alone seems to have pressed the idea that parliamentary government could be carried on by a single chamber. It was his opinion that second chambers arose out of feudalism and that they tended to decline in importance with the spread of democracy." Ibid. p. 50.

† Conference debates 36. Quoted. Ibid. p. 50.

‡ "The basis of representation in the Upper House was the great compromise of the conference, just as it had been in the Convention of the American States at Philadelphia."

Mackay, 'The Unreformed Senate of Canada,' p. 39.

§ Laski. 'A Grammar of Politics,' p. 250.

multilateral problems of its component parts, than in the case of a unitary government. We find in modern federations two ways of setting up the executive authority. The first is the parliamentary form of government which is based upon the responsibility of the executive to the legislature. This is in vogue in Canada, Australia and South Africa, and has also been adopted by Republican Germany. Theoretically speaking, the constitutions of the three dominions vest all executive authority in the British King or his representative, *i.e.* the Governor-General of the Dominion.\* But the actual practice in each dominion is that the Governor-General entrusts the task of forming a cabinet to the leader of the majority party in the legislature. This system has been copied from the Mother Country, the constitution of Canada making it abundantly clear. The preamble to the British North America Act says: "Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom: . . . ." †

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\*Section 9 of the British North America Act Says:—

"The Executive Government of and over Canada is hereby declared to continue and be vested in the Queen."

Newton, 'Federal and Unified Constitutions', p. 202.  
Section 61 of the Constitution of Australia says:

"The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor General as the Queen's representative, and extends to the execution and maintenance of this constitution and of the laws of the Commonwealth," Ibid, p. 342.

Section 8 of the constitution of South African Union States: "The executive Government of the Union is vested in the King, and shall be administered by his majesty in person or by a Governor General as His representative." Ibid. p. 361.

† Newton, 'Federal and Unified Constitutions,' p. 200.

But in the three dominions the detailed working of the executive is not exactly the same. The Governor-General of Canada appoints the provincial governors and exercises some control over the provincial executive. In South Africa the Governor-General not only appoints the provincial heads who are called Administrators but he also exercises considerable power of vetoing provincial legislation. But in Australia the State executives are not under any of these restraints by the Commonwealth executive; the State governors being directly appointed by His Majesty. Again in the Canadian executive the federal principle is in existence even in the composition of the Dominion Cabinet as no Premier dare appoint all his colleagues from the same province. To satisfy the provincial sentiments he has to choose his colleagues from different provinces. This may not be strictly in the best interests of administrative efficiency but it undoubtedly allays discontent and fears of the provinces and ensures support to the Cabinet. This is all due to the racial animosity which is strongly manifested in Canada, and also due to the fact that before the federation could be brought about the various provinces had to be satisfied that they would not be superseded by the bigger members of the Dominion.

In Federations where there is the presidential and not the parliamentary form of government, the responsibility of the executive is provided for in another way. In U. S. A. the President is elected by the presidential voters who are elected for the purpose by the citizens of each state. So that the President is an elected magistrate who holds his office for four years but can be impeached for treason. His executive powers are very great, greater than those of any executive head in any democratic country. He appoints his own cabinet ministers who are responsible to him alone and are not members of the Congress but can attend any house to explain their schemes. They

act as the President instructs them.\* But as in all important matters particularly those relating to treaties with foreign countries he has to secure the assent of the Senate, he cannot rule despotically.† As he is the favourite of a particular party and is not only anxious to keep the party pleased but also to win popular support to earn a name in the history of his country he keeps his policy in conformity with the wishes of his countrymen. We thus see that the Americans have carried this principle of separation of powers rather too far.

In Switzerland the executive consists of seven members who form the Federal Council, the chief executive body of the country, which is the most peculiar body.‡ It entirely differs from the executive of other federations in several respects. This peculiarity is due to previous history and environments in which the Swiss federation was set up. According to the constitution no two councillors can be elected from the same Canton, nor can two persons who are even distant relatives be members of the Council at the same time.§ The term of the Council is three years but the Councillors are usually re-elected as long as they desire to remain there, and the result is that members have often put in long terms of office extending sometimes over a quarter of a century. They are not responsible to the legislature in the parliamentary sense but they carry out its orders and instructions. All this indicates how far the Cantons have

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\*"The President usually consults the Cabinet about the more important questions of legislation and executive policy, but he is under no obligation to do so..... The importance of the cabinet depends on the relative weight of the personality of its members and of the President. The cabinet meets in secret, and it keeps no records. Its votes are of no consequence, the President being free to follow its advice or not."

Reed, 'Form and Functions of American Government,' p. 245.

† Ibid. p. 246.

‡ Brooks, 'Government and Politics of Switzerland,' p. 103.

§ Ibid. pp. 104-105.

shown mutual jealousy, having had bitter experience under the Hapsburgs, and so they made the executive absolutely subservient to the legislature. Afraid of any one Councillor assuming dictatorial powers they have provided for the annual election of a president, and a vice-president of the one year automatically becomes president for the succeeding year, the outgoing president becoming an ordinary councillor. The president, except representing the federation on ceremonial occasions, has almost the same powers as his colleagues.

The question of the kind of executive does not, therefore, seem to have any intimate relation to the question of federations. It would seem to depend upon other circumstances like the influence of the theory of separation of powers when the U. S. A. constitution was framed, or the traditions of the English executive when the dominion federations were formed or the special conditions of political life as in Switzerland.

(c) *The Federal Judiciary.*

We now come to the third and the last branch of federal administration, *i.e.* the Judiciary which is the most important and the most peculiar withal. This peculiar position of a federal judiciary is almost an essential feature of a federal constitution. We have discussed in the first chapter that a federal constitution is supreme, and that there are two governments ever demanding allegiance from the citizen. To uphold the supremacy of the constitution and also to decide all controversial points arising between the state governments and the federal government is the chief function of a federal Supreme Court, besides its being the highest appellate court for ordinary purposes in a federation.

A federal constitution being from its very nature a compact between several independent or quasi-independent states, it is essential that there must be a body created under the constitution and deriving its authority from it and still

separate from and independent of all other branches of federal administration, which should definitely guard against the breach of that compact. The framers of the U. S. A. constitution very early perceived the necessity of such a body and so they established their Supreme Court which, apart from being the highest national tribunal, is at once the guardian of the rights of the states and also a true interpreter and firm upholder of the constitution. It has amply justified its creation and existence by its working and has set a very great example to the framers of federal constitutions.

This example was quickly followed by the Swiss and later on by the Canadians, the Australians and the South Africans, and very recently by the German Republicans. But the powers and composition of the judiciary in all these federations are not the same. In U. S. A. and Republican Germany the Supreme Court is the final judicial authority, and so it is in Switzerland, but subject to confirmation by the Federal Assembly in this case. In Canada, Australia and South Africa the Supreme Court occupies a slightly different position in as much as appeals may be preferred in the Judicial Committee of His Majesty's Privy Council, which has resulted in the maintenance of a very high standard of uniformity of justice in the whole of the British Empire.

Article III of the U. S. A. Constitution deals with the establishment of the Supreme Court. Section II of that Article defines its powers thus : "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made or which shall be made, under their authority ; to all cases affecting ambassadors, other public ministers, and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more

States; between a state and citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States citizens, or subjects." \* According to Section I the judges hold office during good behaviour† and their emoluments are not to be diminished during their continuance in office.

Besides being the highest court of appeal in some cases, a court of original jurisdiction in others, the Supreme Court has the sole authority, to pronounce upon the validity or otherwise of the laws passed by the Congress or by the State Legislatures. But the Supreme Court does not take the initiative to discharge this duty, for to do so would create unnecessary trouble and irritation. It is only when a case is brought before it that it examines whether the laws under which it has arisen is itself in conformity with the spirit of the Constitution or not. It holds the Constitution as the Supreme Law of the land and uses it as the touchstone to test the validity of subsequent legislation and statute making, and whenever it finds that a certain law is contrary to the spirit of the Constitution it at once declares the law or the specific part thereof as void.‡ In this way the Court by its judicial interpretation upholds

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\* A. P. Newton. 'Federal and Unified Constitutions,' p. 91.

† "The standard of good behaviour for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws."

'Federalist,' No. LXXIII. This view of Hamilton explains the reason why the Americans laid down the condition for continuance in office of the judicial officers during good behaviour.

‡ "No legislative act, therefore, contrary to the constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid."

'Federalist,' No. LXXVIII.



the supremacy of the Constitution, and prohibits encroachments upon the powers of the Central Government by the States and vice versa. In no other way could uniformity in judicial interpretation of the laws and the upholding the dignity of the Constitution be provided for except by the creation of one Supreme Court for the whole of the federation, and that too under the authority of the Constitution itself, and also by giving the Court co-extensive power with the legislative authority.\*

Such was the intention and such the device of the fathers of the United States Constitution. Their hopes have been fulfilled by the actual working of their Supreme Court. It has attracted to its bench some of the ablest exponents of law who have very ably contributed to the cause of justice in America. The Court has preserved the Constitution, it has maintained justice between one State and another, it has kept the authority of the Central Government quite separate from that of the State Governments, and lastly it has enabled the citizens to enjoy the benefits of impartial justice. But the most important of its earlier works has been the expounding of the doctrine of 'implied powers.'

We take here a few constitutional cases to illustrate the practical contribution of the U. S. A. Supreme Court to the cause of constitutional jurisdiction. It is important to preface this examination by an explanation which has

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\* "If there are such things as political axioms, the propriety of the judicial power of a government being co-extensive with its legislative, may be ranked among the number. The mere uniformity in the interpretation of the national laws, decides the question, Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed." 'Federalist,' No. LXXX.

Since Hamilton wrote this the number thirteen has gone up to 48 and his argument has greater weight now than perhaps he himself should have imagined at that time

got an importance of its own. It was never intended to give to the Supreme Court the power to amend the Constitution, but the rapid advancement of science, particularly in the nineteenth century, raised new problems which had not been foreseen by the framers of the Constitution. The Court had, therefore, to expound the doctrine of implied powers and this virtually led to the passing of some important constitutional amendments. In this connection Chief Justice Marshall deserves the greatest credit for doing some very valuable work. In 1803 soon after he became Chief Justice, the Supreme Court had to decide an important case *Marbury versus Madison* (1 Cranch, 137). The chief point at issue in this case was whether the Congress could pass a statute to confer upon the Court a power not given it (the Court) by the Constitution. In delivering the opinion of the Court, Marshall C. J. observed: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular case must of necessity expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each."\* And he declared that the Constitution being the Supreme law of the land, the Supreme Court judges, by the very terms of the oath of office to maintain and uphold the Constitution, had the authority to pronounce upon the validity or otherwise of the statutes passed by the Congress.

Sixteen years later in 1819, a very important case *McCulloch versus Maryland* (4 Wheat, 316) came up before the Supreme Court. The facts were that in 1816 the U. S. A. Government incorporated the Bank of the United States. In the following year a branch of the Bank was established at Baltimore in the State of Maryland. In 1818 the legislature of this state passed an act to impose a tax on all banks not chartered by the State legislature, making it

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\*Leading Cases on the Constitution of the United States,' p. 4.

obligatory on them to issue notes on a particular kind of stamped paper. Mc. Culloch, the cashier of the Bank, defied this law and issued notes on unstamped paper, whereupon the State prosecuted him. This audacious act of the State to tax the Bank of the national government, an act absolutely contrary to the spirit of the fathers of the federation, must have stirred Hamilton in his grave. No doubt such a procedure was sure to undermine the unity lying at the root of the Constitution. In delivering the opinion of the Court, Marshall observed: "The government of the Union ..... is emphatically and truly a government of the people. In force and substance it emanates from them, its powers are granted by them, and are to be exercised directly upon them and for their benefit."\* He held that although the Constitution did not confer upon the national government the power to charter a bank, yet this power was implied in the powers enumerated in the Constitution and assigned to the federal government. Section VIII of Article I of the Constitution gave the Congress, among other powers, the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense, to borrow money, to regulate commerce with foreign nations and among the several States, and with the Indian tribes. Justice Marshall held that to carry out these duties the same section gave the Congress power "To make all laws which shall be necessary for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof"† and, therefore, the chartering of a bank being a power necessary for the execution of most of these powers and not a power in itself, the Congress had the authority, conferred by the Constitution, to charter a bank, a power incidental to the discharge

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\* Leading Cases on the Constitution of the United States, p. 44.

† Newton, 'Federal and Unified Constitutions,' p. 86.

of its legitimate functions. The Supreme Court, accordingly, invalidated the act passed by the State legislature of Maryland as being repugnant to the Supreme Law of the land.

Again in 1837 Chief Justice Taney in delivering judgment of the Court in the case '*The Proprietors of the Charles River Bridge versus The Proprietors of the Warren Bridge*' (commonly called the Charles River Bridge Case. 11, Peters, 420), invalidated an act passed by the State legislature of Massachusetts.\* These and many other decisions by the Supreme Court of America have gone a great way in interpreting the Constitution and upholding its supremacy. But recently the U. S. A. Supreme Court has been criticised as being extremely conservative in interpreting the letter of the American Constitution.

But where the Americans completely succeeded in establishing a federal Judiciary competent to protect the rights of all the parties concerned the Swiss, although they copied most of their constitution from the Americans, have signally failed to achieve the object of making their Judiciary what it ought to be in the circumstances of their federation. Afraid of entrusting any independent body with the exercise of even judicial powers they have provided for the election of the judges by the Federal Assembly, and have fixed their term which makes them dependent upon the will of the legislature. The Court is a creation of the constitution of the year 1848 but the subsequent revisions as well as the volume of legislation have increased the sphere of its jurisdiction. But the Court does not possess the power to declare any act or statute unconstitutional and so it cannot function as the upholder of the Constitution, although in actual practice the system does not work as unsatisfactory as it appears to be in theory,

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\* Leading cases on the Constitution of the United States,' pp. 17-27.

and this is on account of special conditions of Swiss political life. But it can discuss whether any law or act is or is not in conformity with the spirit of the Constitution, but all laws or acts of the Cantonal or Federal Legislatures are binding on it. In this sense it resembles the judiciary of other European countries and differs from the judiciary of U. S. A. Also its decisions may in certain cases be upset by the legislature which assumes judicial powers. Another federal feature of the Swiss judiciary is that the judges must be so elected as to represent all the three languages on the bench. The Federal Court is located at Lausanne, the capital of the French speaking canton Vaud, which is a compromise to gain the sympathies of the French speaking population but it also enables the Court to hold its sittings unhampered by the turmoil and influences of the legislature at Bern.

In federal law the jurisdiction of the Federal Court extends to all cases of conflict of jurisdiction between the federal and the cantonal authorities, to all disputes arising between the cantons themselves, and to complaints of all citizens involving violations of their constitutional rights. In Civil Suits the Court exercises its jurisdiction in cases between the federation and cantons, those between the cantons, and those in which the federation is a party against individuals. So that the Court has jurisdiction extending over quite a large sphere, and this is increasing with the increase in the volume of federal legislation. Even then it is true "That it will attain the constitutional position of the Supreme Court of the United States and particularly the power to declare legislative acts unconstitutional, does not, however, seem probable. It would be contrary not only to Swiss but to continental traditions as well."\* So that because of its limited power and the mode of election of the judges and their tenure

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\* Brooks. 'Government and Politics of Switzerland,' p. 177.

as well as the control of the legislature over the judiciary the Swiss have failed to establish an impartial and a powerful federal judiciary, and this becomes more noteworthy when it is remembered that they copied the Americans in several respects.

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## APPENDIX A.

### Constitution of the United States of America, 1787, with subsequent amendments.

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

#### ARTICLE I.

SECTION 1.—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2.—(1) The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

(2) No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

(3) Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number



of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose 3 ; Massachusetts, 8 ; Rhode Island and Providence Plantations, 1 ; Connecticut, 5 ; New York, 6 ; New Jersey, 4 ; Pennsylvania, 8 ; Delaware, 1 ; Maryland, 6 ; Virginia, 10 ; North Carolina, 5 ; South Carolina, 5 ; and Georgia, 3.

(4) When vacancies happen in the representation from any State, the Executive Authority thereof shall issue writ of election to fill such vacancies.

(5) The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.—(1) The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for 6 years ; and each Senator shall have one vote.

(2) Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year ; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments

until the next meeting of the Legislature, which shall then fill such vacancies.

(3) No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

(4) The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

(5) The Senate shall choose their other officers and also President *pro-tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

(6) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

(7) Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.—( The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

(2) The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.—(1) Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members in such manner and under such penalties as each House may provide.

(2) Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds expel a member.

(3) Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy ; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

(4) Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6.—(1) The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same ; and for any speech or debate in either House they shall not be questioned in any other place.

(2) No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased during such time ; and no person holding

any office under the United States shall be a member of either House during his continuance in office.

SECTION 7.—(1) All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

(2) Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

(3) Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and the House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.—The Congress shall have power :

(1) To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United states ; but all duties, imposts, and excises shall be uniform throughout the United States.

(2) To borrow money on the credit of the United States.

(3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

(4) To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

(5) To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

(6) To provide for the punishment of counterfeiting the securities and current coin of the United States.

(7) To establish post-offices and post-roads.

(8) To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

(9) To constitute tribunals inferior to the Supreme Court.

(10) To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.:

(11) To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

(12) To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

(13) To provide and maintain a navy.

(14) To make rules for the government and regulation of the land and naval forces.

(15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

(16) To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

(17) To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ; and

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION 9.—(1) The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

(2) The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(3) No bill of attainder or *ex post facto* law shall be passed.

(4) No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

(5) No tax or duty shall be laid on articles exported from any State.

(6) No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

(7) No money shall be drawn from the Treasury but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

(8) No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state.

SECTION 10.—(1) No State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

(2) No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress.

(3) No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

SECTION 1.—(1) The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:—

(2) Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector.

(3) The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representative shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the vote shall be taken by States, the representation from each State having one vote. A quorum, for this purpose, shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be



necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes the Senate shall choose from them by ballot the Vice-President.

(4) The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day be the same throughout the United States.

(5) No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years and been fourteen years a resident within the United States.

(6) In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

(7) The President shall, at times stated, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

(8) Before he enter on the execution of his office he shall take the following oath or affirmation ;

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2.—(1) The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States except in cases of impeachment.

(2) He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

(3) The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions, which shall expire at the end of their next session.

SECTION 3.—He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4.—The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours.

### ARTICLE III.

SECTION 1.—The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.—(1) The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, other public ministers and consuls ; to all cases of admiralty and maritime jurisdiction : to controversies to which the United States shall be a party ; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

(2) In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

(3) The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed, but

when not committed within any State the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.—(1) Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them, aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(2) The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

#### ARTICLE IV.

SECTION 1.—Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.—(1) The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

(2) A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

(3) No person held to service or labour in one State under the laws thereof, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION 3.—(1) New States may be admitted by the Congress into the Union ; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

(2) The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

SECTION 4.—The United States shall guarantee to every State in this Union a republican form of government and shall protect each of them against invasion, and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

## ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the Legislature of three-fourths of the several States or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress ; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the First Article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

(1) All debts contracted and engagements entered into before the adoption of the Constitution shall be as valid against the United States under this Constitution as under the Confederation.

(2) This Constitution and the laws of the United States which shall be made, in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

(3) The Senators and Representatives before mentioned and the members of the several States Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution ; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present the Seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the independence of the United States of America the Twelfth. In Witness whereof we have hereunto subscribed our names.

*(Here follow the signatures).*

*Articles in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the Fifth Article of the original Constitution.*

## (1791) ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## (1791) ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

## (1791) ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

## (1791) ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## (1791) ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## (1791) ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

## (1791) ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

## (1791) ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## (1791) ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

## (1791) ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## (1798) ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.



(1804)

## ARTICLE XII.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate ; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted ; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice President, if such number of a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall

choose the Vice-President ; a quorum for the purpose shall consist of two-thirds of the number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

(1865)

## ARTICLE XIII.

SECTION 1.—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2.—Congress shall have power to enforce this article by appropriate legislation.

(1868)

## ARTICLE XIV.

SECTION 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2.—Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis

of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3.—No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may by a vote of two-third of each House, remove such disability.

SECTION 4.—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5.—The Congress shall have power to enforce by appropriate legislation the provisions of this article.

(1870)

## ARTICLE XV.

SECTION 1.—The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

SECTION 2.—The Congress shall have power to enforce this article by appropriate legislation.

(1913)

## ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(1913)

## ARTICLE XVII.

(1) The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years, and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

(2) When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the Executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

(3) This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

(1919)

## ARTICLE XVIII.

(1) After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

(2) The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

(3) This article shall be inoperative unless it shall have been ratified as a amendment to the Constitution by

the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

(1920)

#### ARTICLE XIX.

(1) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

(2) Congress shall have power to enforce the provisions of this Article by appropriate legislation.

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## APPENDIX B.

### Federal Constitution of the Swiss Confederation of the 29th May 1874, as Revised up to the end of June 1921.

*In the Name of Almighty God.*

The Swiss Confederation, resolved to consolidate the alliance of the confederated members and to maintain and increase the unity, strength and honour of the Swiss nation, has adopted the following Federal Constitution :—

#### CHAPTER I.—GENERAL PROVISIONS.

ARTICLE 1.—The peoples of the twenty-two sovereign Cantons of Switzerland united in the present alliance, namely: *Zurich, Bern, Lucerne, Uri, Schwyz, Unterwalden* (Upper and Lower), *Glaris, Zug, Freiburg, Solothurn, Basel* (City and Country), *Schaffhausen, Appenzell* (the two Rhodes), *St. Gall, Grisons, Aargau, Thurgau Ticino, Vaud, Valais, Neuchatel* and *Geneva*, form together the Swiss Confederation.

ARTICLE 2.—The object of the Confederation is to ensure the independence of the country against the foreigner, to maintain peace and order within its borders, to protect the liberties and rights of its members, and to promote their common prosperity.

ARTICLE 3.—The Cantons are sovereign so far as their sovereignty is not limited by the Federal Constitution, and as such they exercise all rights which are not delegated to the Federal Power.

ARTICLE 4.—All Swiss people are equal before the law. In Switzerland there are no subjects nor any privileges of rank, birth, person or family.

ARTICLE 5.—The Confederation guarantees to the Cantons their territory, their sovereignty within the limits fixed by Article 3, their constitutions, the liberty and rights of their people, the constitutional rights of the citizens, and the rights and powers conferred by the people on the authorities.

ARTICLE 6.—The Cantons are required to demand from the Confederation its guarantee of their Constitutions.

This guarantee must be accorded, provided :

- (a) that the Constitution contain nothing contrary to the provisions of the Federal Constitution,
- (b) that they ensure the exercise of political rights according to republican forms—representative or democratic ;
- (c) that they have been accepted by the people and can be revised when an absolute majority of citizens so demand.

ARTICLE 7.—All separate alliances and treaties of a political character between Cantons are forbidden.

The Cantons, however, have the right to make agreements with one another on matters of legislation, administration and justice ; but such agreements must be communicated to the Federal authority, which may prohibit their execution if they contain anything prejudicial to the Confederation or the rights of other Cantons. In the absence of such prohibition, the Cantons making the agreement are authorized to require the co-operation of the Federal authorities in their execution.

ARTICLE 8.—The Confederation has the sole right to declare war and conclude peace, and to make alliances and treaties, particularly customs and commercial treaties, with foreign States.

ARTICLE 9.—Exceptionally, the Cantons retain the right to conclude treaties with foreign States, in respect of matters of public economy and police and border relation ; but such treaties must not contain anything prejudicial to the Confederation or the rights of other Cantons.

ARTICLE 10.—Official intercourse between the Cantons and foreign governments or their representatives shall take place through the Federal Council.

But in regard to matters mentioned in the preceding article the Cantons may correspond directly with the subordinate authorities and officers of a foreign State.

ARTICLE 11.—Military “ capitulations ” are prohibited.

ARTICLE 12.—Members of the Federal authorities, civil and military officials of the Confederation, and Federal representatives and commissioners may not accept from any foreign government any pension, salary, title, gift or decoration.

If they already possess such pensions, titles, or decorations they must renounce them for the term of their office.

Subordinate officials may, however, be authorised by the Federal Council to continue to receive their pensions.

In the Federal army, decorations and titles awarded by any foreign government are prohibited.

No officer, non-commissioned officer, or soldier may accept any such distinction.

ARTICLE 13.—The Confederation may not maintain a standing army.

No Canton or Half-Canton may maintain more than 300 men as a permanent military force (excluding police) without permission of the Federal authority.

ARTICLE 14.—The Cantons must abstain, in the event of differences arising between them, from any attack or resort to arms. They must submit to the settlement of such differences in the manner prescribed by the Confederation.



**ARTICLE 15.**—In case of sudden danger from without, the Government of the Canton threatened must invoke the assistance of the Confederated States and immediately notify the Federal Authority, the measures which may subsequently be taken by the latter not being prejudiced thereby. The Cantons so called upon are bound to give their assistance. The cost shall be borne by the Confederation.

**ARTICLE 16.**—In case of internal disorder or of danger being threatened from another Canton, the Government of the Canton threatened must immediately notify the Federal Council, in order that that body may take the necessary measures within the limits of its competence (Article 102, Nos. 3, 10 and 11) or convene the Federal Assembly. In case of urgency the Cantonal Government, while immediately notifying the Federal Council, may call for the assistance of the other Confederated States, which the latter are bound to render.

When the Cantonal Government is not in a position to summon assistance, the competent Federal Authority may intervene on its own initiative, and is bound to do so if the disorders endanger the safety of Switzerland.

The costs shall be borne by the Canton by which assistance was invoked or intervention necessitated, unless the Federal Assembly on consideration of the special circumstances should otherwise decide.

**ARTICLE 17.**—Every Canton must give free passage to troops in the cases mentioned in Articles 15 and 16.

The troops are placed immediately under Federal command.

**ARTICLE 18.**—Every Swiss male is liable for military service.

Soldiers who lose their lives or suffer permanent injury to their health in the Federal service are entitled to assistance from the Confederation for themselves or their families, if in need.

Every soldier shall be supplied, free of charge, with his first outfit of arms, equipment and clothing. Arms remain in the possession of the soldier upon conditions to be determined by Federal legislation.

The confederation will prescribe uniform regulations as to the tax on exemption from military service.

ARTICLE 19.—The Federal army consists of—

(a) the Cantonal corps;

(b) all Swiss who, not being members of these corps, are nevertheless liable for military service.

The control of the Federal army and of war material provided in accordance with the law is vested in the Confederation.

In case of danger, the Confederation has also the right of exclusive and immediate control over all men not incorporated in the Federal army and of all other military resources of the Cantons.

The Cantons exercise control over the military forces of their territory save in so far as this right is limited by the Constitution or by Federal legislation.

ARTICLE 20.—Laws as to the organization of the army are enacted by the Confederation. The execution of military laws within the Cantons is undertaken by the Cantonal authorities within the limits prescribed by Federal legislation and under the supervision of the Confederation.

Military instruction and the arming of troops are under the exclusive control of the Federation.

The supply and renewal of clothing and equipment are within the competence of the Cantons, but the cost thereof shall be reimbursed to the Cantons in manner to be prescribed by Federal law.

ARTICLE 21.—So far as military considerations permit, each corps shall consist of troops from the same Canton.

The composition of such corps, the obligation of maintaining their strength, and the appointment and promotion

of their officers rests with the Cantons, subject to general regulations communicated to them by the Confederation.

**ARTICLE 22.**—In return for reasonable compensation, the Confederation has the right to make use of or to acquire drill grounds and buildings used for military purposes, together with all accessories, in the Cantons.

The conditions governing compensation shall be regulated by Federal legislation.

**ARTICLE 23.**—The Confederation may construct at its own expense, or encourage by subsidies the construction of, public works of utility to Switzerland as a whole, or to any considerable part of the country.

For this purpose it may order expropriations on payment of just compensation. Federal legislation will make the necessary provision in this respect.

The Federal Assembly may prohibit public works which endanger the military interests of the Confederation.

**ARTICLE 24.**—The Confederation has the right of supreme control of the policing of embankments and forests.

It will assist in the control and embanking of rivers and the reafforestation of the districts in which they rise, and will decree the measures necessary for the maintenance of such works and the preservation of the existing forests.

**ARTICLE 24a.**—The utilisation of water-power is under the supreme control of the Confederation.

Federal legislation will make the necessary provision for safeguarding the public interest and ensuring the rational utilisation of water-power, taking into account, as far as possible, the interests of internal navigation.

Subject to such Federal legislation, the Cantons regulate the utilisation of water-power.

Concessions shall, notwithstanding, be granted by the Confederation in any case where the utilisation of a water-course under the jurisdiction of more than one Canton is

sought for the production of hydraulic power and the Cantons have failed to come to any agreement as to the granting of a concession. The Confederation shall likewise have power to grant concessions, after hearing the views of the Cantons Concerned, in respect of watercourses forming the frontier of the country.

Fees and royalties payable in respect of the utilisation of water-power are the property of the Cantons or of those entitled to them under Cantonal law.

Fees and royalties payable in respect of concessions made by the Confederation shall be determined by the Confederation, after consideration of the views of the Cantons concerned and having due regard to their legislation. Fees and royalties payable in respect of other concessions shall be determined by the Cantons, subject to the limitations imposed by Federal legislation.

The diversion abroad of energy produced from water-power may not take place without authority from the Confederation.

Upon the coming into force of this Article, all new water-power concessions shall be subject to future Federal legislation.

The Confederation has the right to legislate upon the transmission and distribution of electrical energy.

ARTICLE 24b.—Legislation affecting navigation is within the province of the Confederation.

ARTICLE 25.—The Confederation may make laws for the regulating of fishing and hunting, particularly with a view to the preservation of forest animals in the mountains and the protection of birds useful to agriculture and sylviculture.

ARTICLE 25a.—The bleeding of animals for slaughter which have not been previously stunned is expressly forbidden. This provision applies to all methods of slaughter and to all kinds of animals,

ARTICLE 26.—Legislation on the construction and working of railways is within the province of the Confederation.

ARTICLE 27.—The Confederation may establish, in addition to the existing Federal Polytechnic, a Federal University and other institutions for higher education, or may subsidise establishments of this kind.

The Cantons provide for primary education, which must be adequate, and exclusively under the control of the civil authorities. Primary education is compulsory and, in the public schools, free.

Public schools must be open for the attendance of members of all religious faiths without prejudice to them in any way in respect of their conscience or belief.

The Confederation will take any necessary measures against Cantons which fail to fulfil these obligations.

ARTICLE 27a.—Subventions shall be granted to the Cantons to aid them in carrying out their obligations in respect of primary education. Effect will be given to this provision by legislation. The organisation, direction and supervision of primary schools remains within the competence of the Cantons, subject to the provisions of Article 27.

ARTICLE 28.—Customs duties are within the province of the Confederation, which may impose import and export taxes.

ARTICLE 29.—The collection of Federal customs must be regulated in accordance with the following principles:—

1. Import taxes.

- (a) Materials necessary to the industry and agriculture of the country must be taxed as lightly as possible.
- (b) The same principle applies to commodities necessary for the maintenance of life.
- (c) Articles of luxury must be subject to the heaviest taxes. Except where circumstances render it impossible, these principles

must be observed in the conclusion of commercial treaties with foreign countries.

2. Export taxes must be as moderate as possible.
3. Legislation on customs will contain suitable provisions for the continuance of commercial and market intercourse across the frontier.

The foregoing provisions do not preclude the Confederation from taking exceptional measures temporarily to meet abnormal circumstances.

ARTICLE 30.—Revenue from customs duties belongs to the Confederation.

The indemnities hitherto paid to the Cantons in respect of the redemption of customs, road and bridge tolls, market fees and similar revenues are abolished.

The Cantons of Uri, Grisons, Ticino and Valais shall nevertheless receive, on account of their international Alpine highways, a yearly indemnity fixed, having regard to all the circumstances, at the following rates:—

|         |     |     |     | Francs. |
|---------|-----|-----|-----|---------|
| Uri     | ... | ... | ... | 80,000  |
| Grisons | ... | ... | ... | 200,000 |
| Ticino  | ... | ... | ... | 200,000 |
| Valais  | ... | ... | ... | 50,000  |

In addition, the Cantons of Uri and Ticino shall receive, for clearing the snow from St. Gothard route, a total annual indemnity of 40,000 francs until such time as this route is replaced by a railway.

ARTICLE 31.—Freedom of commerce and industry is guaranteed throughout the Confederation, with the following exceptions:—

- (a) The monopoly of salt and gunpowder, Federal customs, import duties on wines and other spirituous, liquors, together with the other taxes on articles of consumption expressly recognized by the Confederation in accordance with Article 32;

- (b) the manufacture and sale of distilled liquors, as provided by Articles 32a and 32b.
- (c) all matters affecting drinking places and the sale by retail of spirituous liquors, in the sense that the Cantons may by legislation impose restrictions required by the public welfare upon the keeping of drinking places and on the sale by retail of spirituous liquors;
- (d) sanitary measures against diseases which are infectious, widespread or exceptionally dangerous to human beings or animals;
- (e) regulations as to the exercise of commercial and industrial occupations, and taxes in connection therewith, and the control of roads. Such regulations must not contravene the principle of freedom of commerce and industry.

ARTICLE 32.—The Cantons are authorized to collect the import duties on wines and other spirituous liquors referred to in Article 31, Clause (a), subject in all cases to the following restrictions:—

- (a) The collection of these duties must not impede the free transit of goods; commerce must be hindered as little as possible and may not be subjected to any other tax.
- (b) If commodities imported for consumption are re-exported from the Canton, the duty paid on import must be re-funded without further charge.
- (c) Commodities produced in Switzerland must be taxed at a lower rate than those of foreign origin.
- (d) The import duties on wines and other spirituous liquors produced in Switzerland may not be increased in Cantons where such duties now exist, nor may such duties be imposed by Cantons which do not collect them at the present time.

- (c) Cantonal laws and decrees in regard to the collection of import duties must, before being put into operation, be submitted for approval to the Federal authorities, for them to ensure, if necessary, that the foregoing provisions are observed.

All import duties at present collected by the Cantons, together with similar duties collected by Communes, must be abolished, without compensation, by the end of the year 1890.

ARTICLE 32a.—The Confederation may by legislation impose restrictions upon the manufacture and sale of distilled beverages, but such restrictions may not impose taxation on products which are exported or have been rendered unfit for use as beverage. The distillation of wine, stone and kernel fruits and the waste products thereof, gentian roots, juniper berries and similar materials, is exempted from Federal restrictions as to manufacture and taxation.

After the abolition of the import duties on spirituous liquors mentioned in Article 32 of the Federal Constitution, the trade in alcoholic beverages not distilled may not be subjected by the Cantons to any special tax nor to any other restriction save such as may be necessary to protect the consumer against adulterated or unwholesome beverages. But the powers of the Cantons under Article 31, in respect of the control of drinking places and the sale by retail of quantities of less than two litres, remain unaffected.

The net receipts accruing from duties upon the sale of distilled beverages remain the property of the Cantons in which they are collected.

The net receipts of the Confederation accruing from distillation within the country and the corresponding increase in duties on distilled beverages imported from abroad are distributed among all the Cantons in proportion to their populations as ascertained at the last preceding Federal



census. The Cantons must expend at least ten per cent. of the receipts in combating the causes and effects of alcoholism.

ARTICLE 32b.—The manufacture, importation, transport and sale or keeping for sale, of the liquor called absinthe are prohibited throughout the Confederation. The prohibition extends to all beverages, by whatever name called, which are imitations of absinthe. The through transport of absinthe and the use of absinthe in pharmacy are excepted from this prohibition.

The foregoing prohibition will come into operation two years after its adoption. Federal legislation will make the necessary provision for giving effect to this prohibition.

The Confederation may by law impose the same prohibition on all other beverages containing absinthe which may be deemed dangerous to the public welfare.

ARTICLE 33.—The Cantons may require evidence of capacity from persons desiring to practise the liberal professions.

Federal legislation will make provision that such persons may be able to obtain certificates of qualification valid throughout the Confederation.

ARTICLE 34.—The Confederation may make uniform regulations concerning child labour in factories, the hours of work of adults in factories, and the protection of workers in unhealthy or dangerous trades.

The operations of emigration agencies and insurance undertakings not established by the State are subject to Federal supervision and legislation.

ARTICLE 34a.—The Confederation will introduce legislation to provide for sickness and accident insurance, regard being had to existing institutions.

Such insurance may be made compulsory on all or on specified categories of citizens.

ARTICLE 34b.—The Confederation may make uniform regulations concerning arts and industries.

ARTICLE 35.—The establishment of gaming houses is prohibited.

All enterprises exploiting games of chance shall be deemed to be gaming houses.

All such enterprises at present in existence shall be closed within a period of five years from the adoption of this Article.

The Confederation may also take any necessary measures against lotteries.

ARTICLE 36.—Throughout Switzerland posts and telegraphs are within the province of the Confederation.

Revenues from posts and telegraphs belong to the Federal Treasury.

Postal and telegraphic charges must be fixed on the same principles and as equitably as possible in every part of Switzerland.

The inviolable secrecy of letters and telegrams is guaranteed.

ARTICLE 37.—The Confederation exercises supreme control over all roads and bridges in the maintenance of which it is concerned.

The sums due to the Cantons specified in Article 30 on account of their international Alpine highways may be withheld by the Federal authorities if these highways are not properly maintained.

ARTICLE 37a.—The Confederation may make regulations concerning automobiles and cycles.

The Cantons retain the right to restrict or prohibit automobile and cycle traffic, but the Confederation may nevertheless declare open or partially open to traffic highways necessary for through traffic. The use of highways upon the business of the Confederation may not be restricted.

ARTICLE 37b.—Legislation concerning aerial navigation is within the province of the Confederation.

ARTICLE 38.—The Confederation exercises exclusive rights in regard to coinage.

It has the sole right of coining money.

It determines the monetary system, and may, if necessary, regulate the rate of exchange of foreign moneys.

ARTICLE 39.—The right of issuing bank-notes and other fiduciary money is vested exclusively in the Confederation.

The Confederation may exercise its monopoly of note issue through a State Bank placed under a special administration, or may concede its monopoly, subject to the right of redemption, to a central joint stock bank, which shall be administered with the assistance and under the control of the Confederation.

The principal function of the Bank invested with the monopoly shall be to regulate the money market in Switzerland and to facilitate payments.

At least two-thirds of the net profits of the Bank, after payment of interest or reasonable dividend on the endowment or share capital, and after allocations to the reserve funds, must be distributed among the Cantons.

The Bank and its branches shall be exempt from all Cantonal taxation.

Forced circulation of bank-notes or any other form of fiduciary money may be decreed by the Confederation only in case of necessity in time of war.

Federal legislation shall make provision as to the seat of the Bank, its basis and organisation, and generally as to the carrying into effect of this Article.

ARTICLE 40.—The system of weights and measures is determined by the Confederation.

The laws relating thereto are administered by the Cantons under Federal supervision.

ARTICLE 41.—The Confederation has the monopoly of the manufacture and sale of gun-powder throughout Switzerland.

ARTICLE 41A.—The Confederation may impose stamp duties upon title-deeds, receipts for insurance premiums, bills of exchange, and similar instruments, documents in use in transport and other documents concerning commercial operations; but such duties may not be imposed on documents concerning landed property and mortgages.

The Cantons may not subject to any stamp duty or registration duty documents which are liable to Federal stamp duty or which have been exempted therefrom.

One-fifth of the net product of the stamp duties shall be payable to the Cantons.

The carrying into effect of this Article will be provided for by legislation.

ARTICLE 42.—The expenses of the Confederation are met by—

- (a) the revenues from Federal property ;
- (b) the revenue from Federal customs collected on the Swiss frontiers ;
- (c) the revenues from posts and telegraphs ;
- (d) the revenue from the gunpowder monopoly ;
- (e) half the gross product of the military exemption taxes collected by the Cantons ;
- (f) contributions by the Cantons determined by Federal legislation, having special regard to their wealth and taxable resources.
- (g) the revenue from stamp duties.

ARTICLE 43.—Every citizen of a Canton is a Swiss citizen.

As such he is entitled, after having duly proved his qualification as a voter, to take part at his place of domicile in all Federal elections and pollings.

No person may exercise political rights in more than one Canton.

A Swiss citizen by settlement enjoys at his place of domicile all the rights of a citizen of the Canton together

with the rights of a citizen of the Canton together with the rights of a citizen of the Commune. Participation in the property of communes of citizens and of corporations, and the right to vote in matters exclusively connected therewith, are excluded from these rights, unless otherwise provided by Cantonal legislation.

In Cantonal and Communal matters a Swiss citizen by settlement acquires the rights of an elector after settlement for a period of three months.

Cantonal laws concerning settlement and electoral rights in communal affairs possessed by citizens by settlement shall be submitted to the Federal Council for approval.

ARTICLE 44.—No Canton may expel from its territory any citizen of the Canton nor deprive him of his rights as a native or burgher.

Federal legislation shall determine the conditions upon which foreigners may be naturalized and those upon which Swiss citizens may renounce their nationality in order to obtain naturalization in a foreign country.

ARTICLE 45.—Every Swiss citizen has the right to settle in any part of Switzerland, subject to the production of a certificate of origin or similar document. The right of settlement may, by way of exception, be *refused* to or *withdrawn* from persons who have been deprived of their civic rights as a result of a penal conviction,

The right of settlement may also be withdrawn from persons who have been repeatedly sentenced for grave misdemeanours, and from persons, who become a permanent burden upon public charity, and whose Commune or Canton of origin refuses to provide adequate assistance for them after having been officially requested to provide it.

In Cantons in which domiciliary relief is provided permission for settlement may be made conditional, in the case of citizens of the Canton, upon the person being capable of work and not having been a permanent charge

upon public charity in their former domicile in the Canton of origin.

Every expulsion on account of poverty must be confirmed by the government of the Canton of domicile and notified in advance to the Canton of origin.

The Canton in which a Swiss citizen settles may not require from him any security or impose any special charge upon him in respect of such settlement. Similarly, Communes may not impose on Swiss citizens domiciled within their area any charges other than those imposed upon their own citizens.

The maximum chancellory fee chargeable in respect of permits for settlement shall be determined by Federal law.

ARTICLE 46.—Persons settled in Switzerland shall normally be subject in all matters of civil law to the jurisdiction and legislation of their place of domicile.

Federal legislation will make the necessary provisions for the application of this principle and for preventing double taxation of a citizen.

ARTICLE 47.—Federal legislation shall define the difference between settlement and temporary residence, and at the same time prescribe the regulations governing the political and civil rights of Swiss citizens during temporary residence.

ARTICLE 48.—A Federal law shall make provision as to the expenses of the illness and burial of poor citizens of one Canton who fall ill or die in another Canton.

ARTICLE 49.—Liberty of conscience and creeds is inviolable.

No person may be compelled to become a member of any religious association, submit to any religious instruction, perform any act of religion, or incur any penalties, of any kind whatsoever, by reason of his religious opinions.

Persons exercising the authority of parent or guardian are entitled, in conformity with the foregoing principles, to determine the religious education of children up to the age of sixteen years.

The exercise of civil or political rights may not be limited by any ecclesiastical or religious requirements or conditions of any kind whatsoever.

No person may refuse, on the ground of religious opinion, to fulfil any obligation of citizenship.

No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of the purely religious expenses of any religious community of which he is not a member. The application of this principle will be determined by Federal legislation.

ARTICLE 50.—The free exercise of religion is guaranteed within limits compatible with public order and morality.

The Cantons and the Confederation may take measures necessary to maintain public order and peace between the members of different religious communities and to prevent encroachments by ecclesiastical authorities upon the rights of citizens and of the State.

Legal proceedings, under public or private law, arising out of the formation of religious communities, or the division of existing religious communities, may be brought by way of petition before the competent Federal authorities.

No bishopric may be created within Swiss territory without the approval of the Confederation.

ARTICLE 51.—The order of Jesuits, and societies affiliated with it may not be admitted into any part of Switzerland, and all activities in church and school are forbidden to their members.

This prohibition may be extended by Federal decree to other religious orders whose activity is inimical to the State or disturbs the peace between different religions.

ARTICLE 52.—The founding of new religious houses or religious orders, and the re-establishment of those which have been suppressed, are forbidden.

ARTICLE 53.—Civil condition and registration in connection therewith are subject to the civil authorities. Federal legislation will make the necessary provision for the application of this article.

The control of burial-places is subject to the civil authorities, which must provide that every deceased person may receive decent burial.

ARTICLE 54.—The right to marry is under the protection of the Confederation.

No impediment to marriage may be based upon grounds of religious belief, the poverty of either party, their conduct, or any other considerations of a police nature.

Marriages concluded in any Canton or abroad in accordance with the law there prevailing shall be recognised as valid throughout the Confederation.

A wife acquires on marriage the citizenship of the commune of her husband.

Children born before the marriage are legitimised by the subsequent marriage of their parents.

No marriage fee or similar impost may be levied on either husband or wife.

ARTICLE 55.—Liberty of the Press is guaranteed, but the Cantons may by legislation take measures necessary for the prevention of abuses. Such laws must be submitted to the Federal Council for approval. The Confederation may also prescribe penalties in order to suppress abuses of the liberty of the Press directed against the Confederation or Federal authorities.

ARTICLE 56.—Citizens have the right to form associations provided that the objects and methods of such associations are not unlawful or dangerous to the State. Cantonal



legislation will make the necessary provision for the prevention of abuses.

ARTICLE 57.—The right of petition is guaranteed.

ARTICLE 58.—No person may be withdrawn from his proper judge. Accordingly, extraordinary tribunals may not be established.

Ecclesiastical jurisdiction is abolished.

ARTICLE 59.—Suits for personal claims against a solvent debtor domiciled in Switzerland must be brought before a judge of his place of domicile; and the property of such a person may not be seized or sequestered outside the Canton in which he is domiciled in satisfaction of personal claims. These provisions are, in respect of foreigners, without prejudice to the provisions of international treaties.

Imprisonment for debt is abolished.

ARTICLE 60.—Every Canton is bound to accord to citizens of the other Confederated States the same treatment as to its own citizens in regard to legislation and judicial proceedings.

ARTICLE 61.—Final civil judgments delivered in any Canton may be executed throughout Switzerland.

ARTICLE 62.—Internal taxes on property leaving one Canton for another (*"la traite foraine"*) are abolished throughout Switzerland, together with all rights of first purchase (*"le droit de retrait"*) by citizens of one Canton as against those of another Canton.

ARTICLE 63.—Taxes on the transfer of property to foreign countries are abolished, subject to reciprocity.

ARTICLE 64.—The Confederation has power to legislate in regard to—

civil capacity;

all legal questions relating to commerce and transactions affecting movable property (law of obligations, including commercial law and the law of exchange);

literary and artistic copyright;  
the protection of industrial inventions, including  
designs and models;  
and suits for debt and bankruptcy.

The Confederation has power also to legislate upon other matters of civil law.

The organization of the judiciary, legal procedure and the administration of justice remain vested in the Cantons to the same extent as hitherto.

ARTICLE 64a.—The Confederation has power to legislate in regard to the penal law.

The organization of the judiciary, legal procedure and the administration of justice remain vested in the Cantons to the same extent as hitherto.

The Confederation may grant subventions to the Cantons for the construction of penitentiaries, workhouses and houses of correction and for the carrying out of reforms in the penal system. It may likewise give assistance to institutions for the care of deserted children.

ARTICLE 65.—Sentence of death may not be pronounced for any political offence.

Corporal punishment is forbidden.

ARTICLE 66.—Federal legislation will prescribe the limits within which a Swiss citizen may be deprived of his political rights.

ARTICLE 67.—Extradition from one Canton to another will be dealt with by Federal legislation, but extradition may not be made obligatory for political or Press offences.

ARTICLE 68.—The measures to be taken for dealing with persons without nationality (*Heimatlosen*), and for preventing the occurrence of such cases in future, will be prescribed by Federal legislation.

ARTICLE 69.—The Confederation may take legislative measures to deal with infectious, epidemic and exceptionally dangerous diseases of men and animals.

ARTICLE 69a.—The Confederation has the right to legislate upon trade in (a) foodstuffs, and (b) other household commodities and articles of general use, in so far as they may be prejudicial to health or life.

Such laws will be executed by the Cantons under the supervision of and with financial assistance from the Confederation.

The Confederation controls importation over the national frontier.

ARTICLE 70.—The Confederation may expel from its territory foreigners who compromise the internal or external security of Switzerland.

## CHAPTER II.

### THE FEDERAL AUTHORITIES.

#### *I.—The Federal Assembly.*

ARTICLE 71.—Subject to the rights reserved to the people and to the Cantons (Articles 80 and 121), the supreme power of the Confederation is exercised by the Federal Assembly, composed of two divisions or Councils, viz :—

A. The National Council.

B. The Council of States.

#### *A.—The National Council*

ARTICLE 72.—The National Council is composed of deputies elected by the Swiss people in the proportion of one member to each 20,000 of the total population. Fractions greater than 10,000 are reckoned as 20,000.

Each Canton, and in the divided Cantons, each half-Canton, elects at least one deputy.

ARTICLE 73.—Elections to the National Council are direct, and are conducted on the principle of proportional representation. Each Canton or half-Canton forms an electoral constituency. Federal legislation shall make the necessary detailed provision to give effect to this principle.

ARTICLE 74.—Every Swiss person who has reached the age of twenty years, and who is not excluded from the rights of active citizenship by the laws of the Canton in which he is domiciled, has the right to take part in elections and pollings.

ARTICLE 75.—Every lay Swiss citizen entitled to vote is eligible for membership of the National Council.

ARTICLE 76.—The National Council is elected for a period of three years, and is completely renewed at each election.

ARTICLE 77.—Deputies to the Council of States, members of the Federal Council, and officers appointed by that Council, cannot be at the same time members of the National Council.

ARTICLE 78.—The National Council selects a Chairman and Vice-Chairman from amongst its members for each ordinary and extraordinary session. A member who has been Chairman during one ordinary session is not eligible, in the next ordinary session, either as Chairman or as Vice-Chairman. The same member cannot be Vice-Chairman during two consecutive ordinary sessions.

In case of equality of votes, the Chairman has a casting vote; in elections, he votes in the same way as other members.

ARTICLE 79.—The members of the National Council receive an allowance from Federal Funds.

#### B.—THE COUNCIL OF STATES.

ARTICLE 80.—The Council of States is composed of forty-four deputies from the Cantons. Each Canton appoints two deputies; in divided Cantons each half-Canton elects one.

ARTICLE 81.—Members of the National Council and those of the Federal Council may not be deputies to the Council of States,

**ARTICLE 82.**—The Council of States selects a Chairman and Vice-Chairman from among its members for each ordinary and extraordinary session.

Neither the Chairman nor the Vice-Chairman may be elected from among the deputies of the Canton from whose representatives the Chairman was chosen for the ordinary session immediately preceding.

Deputies from the same Canton cannot occupy the office of Vice-Chairman during two consecutive ordinary sessions.

In case of an equality of votes, the Chairman has a casting vote; in elections, he votes in the same way as other members.

**ARTICLE 83.**—The deputies to the Council of States receive an allowance from the Cantons.

#### C.—POWERS OF THE FEDERAL ASSEMBLY.

**ARTICLE 84.**—The National Council and the Council of States deliberate on all matters which this Constitution places within the competence of the Confederation, and which are not assigned to any other Federal authority.

**ARTICLE 85.**—The following matters in particular are within the competence of the two Councils:—

1. Laws dealing with the organisation and mode of election of the Federal authorities.

2. Laws and decrees dealing with matters which the Constitution assigns to the Federal authorities.

3. Salaries and allowances of members of the Federal Departments and of the Federal Chancellery; the establishment of permanent Federal offices, and the determination of salaries in connection therewith.

4. The election of the Federal Council, the Federal Tribunal, the Chancellor, and the Commander-in-Chief of the Federal Army. The right of election or confirmation in respect of other offices may be vested in the Federal Assembly by Federal legislation.

5. Alliances and Treaties with foreign States, confirmation of Treaties made by the Cantons between themselves or with foreign States: provided always that such Cantonal Treaties may be submitted to the Federal Assembly only on appeal by the Federal Council or another Canton.

6. Measures dealing with the external safety and the preservation of the independence and of the neutrality of Switzerland; the declaration of war and the conclusion of peace.

7. Guarantee of the Constitutions and territorial integrity of the Cantons; intervention following upon this guarantee; the internal safety of Switzerland; the maintenance of peace and good order; amnesties and pardons.

8. Measures necessary to ensure the due observance of the Federal Constitution, the guarantee of Cantonal Constitutions, and the fulfilment of Federal obligations.

9. The control of the Federal army.

10. The enactment of the annual budget, the approval of State accounts and decrees authorising loans.

11. General supervision of Federal administration and the Federal Courts.

12. Appeals against decisions of the Federal Council relating to administrative disputes.

13. Conflicts of jurisdiction between the Federal authorities.

14. Revision of the Federal Constitution.

ARTICLE 86.—Both Councils meet once a year in ordinary session on a day fixed by Standing Orders.

Extraordinary meetings are summoned by the Federal Council, or on the request of one-quarter of the members, or of five Cantons.

ARTICLE 87.—The attendance of an absolute majority of the total number of its members is necessary for the valid transaction of business by either Council.

ARTICLE 88.—In both the National Council and the Council of States questions are decided by an absolute majority of those voting.

ARTICLE 89.—Federal laws, decrees and ordinances can be made only by agreement between the two Councils.

Federal laws are submitted for acceptance or rejection by the people if a demand be made by 30,000 active citizens or by eight Cantons. Federal decrees which are of general effect and are not urgent are likewise submitted on demand.

International Treaties concluded for a period of indeterminate duration or of more than fifteen years must also be submitted for acceptance or rejection by the people upon the demand of 30,000 active citizens or eight Cantons.

ARTICLE 90.—Federal legislation shall determine the forms and suspensory intervals to be observed in popular votings.

ARTICLE 91.—Members of both Councils vote without instructions.

ARTICLE 92.—The two Councils meet separately. Nevertheless, for the purpose of the elections mentioned in Article 85, Section 4, of exercising the right of pardon, or of pronouncing on conflicts of jurisdiction (Article 85, Section 13), the two Councils meet in joint session under the presidency of the Chairman of the National Council, decisions being reached by a majority of all the members of the two Councils voting.

ARTICLE 93.—Each of the two Councils and each of their members has the right of initiating laws, decrees, and amendments of the Constitution.

The Cantons can exercise the same right by correspondence.

ARTICLE 94.—Meetings of the Council shall normally be public.

## II.—THE FEDERAL COUNCIL.

ARTICLE 95.—The supreme directing and executive power of the Confederation is exercised by a Federal Council composed of seven members.

ARTICLE 96.—Members of the Federal Council are appointed for three years by the two Councils in joint session and are chosen from among all Swiss citizens eligible to the National Council. Not more than one person from each Canton may be chosen for the Federal Council.

The Federal Council is completely renewed after every general election of the National Council.

Vacancies arising within the normal period of three years are filled at the next meeting of the Assembly for the remainder of the period of office.

ARTICLE 97.—The members of the Federal Council may not, during their term of office, occupy any other position, whether in the service of the Confederation or of a Canton, or engage in any other calling or profession.

ARTICLE 98.—The President of the Confederation presides over the Federal Council. A Vice-President of the Council shall also be appointed.

The President of the Confederation and Vice-President of the Federal Council are nominated by the Assembly for one year from amongst members of the Federal Council.

An outgoing President cannot be elected President or Vice-President for the following year.

The same member cannot act as Vice-President for two consecutive years.

ARTICLE 99.—The President and other members of the Federal Council receive an annual salary paid from Federal funds.

ARTICLE 100.—At least four members of the Federal Council must be present for the valid transaction of business.

ARTICLE 101.—Members of the Council have the right to speak, but not to vote, in both divisions of the Assembly,



as well as the right of proposing motions on subjects under discussion.

ARTICLE 102.—The powers and duties of the Federal Council, within the limits of the Constitution, are more particularly the following :—

1. It directs all Federal business in accordance with the laws and decrees of the Confederation.

2. It ensures the observance of the Constitution and the laws and decrees of the Confederation and of Federal concordats. It takes the necessary measures to this end, upon its own initiative or upon complaint made, in such cases as are not required to be dealt with by the Federal Tribunal in accordance with Article 113.

3. It enforces, the guarantee of the Cantonal Constitutions.

4. It drafts laws and decrees for presentation to the Federal Assembly and reports upon proposals submitted by the Councils or by the Cantons.

5. It provides for the execution of the laws and decrees of the Confederation, of the judgments of the Federal Tribunal, and of agreements and arbitration awards upon disputes between Cantons.

6. It makes such appointments as are not entrusted to the Federal Assembly, Federal Tribunal, or other authority.

7. It examines treaties made between the Cantons with one another or with foreign countries, and gives its approval thereto if it think fit (Article 85, Section 5).

8. It watches over the external interests of the Confederation, particularly in regard to the observance of international agreements, and has general charge of foreign affairs.

9. It ensures the external safety of Switzerland and the maintenance of its independence and neutrality.

10. It ensures the internal safety of Switzerland and the maintenance of peace and order.

11. In case of urgency arising when the Federal Assembly is not in session, the Federal Council has authority to call out troops and employ them as it may think necessary, provided that it must convene the Councils immediately if the number of troops called out exceeds two thousand or if they remain mobilized for more than three weeks.

12. It has charge of the Federal military forces and of all branches of the administration thereof which are vested in the Confederation.

13. It examines the laws and ordinances of the Cantons which are required to be submitted to it and supervises the branches of Cantonal administration which are placed under its control.

14. It administers the finances of the Confederation, prepares the budget and submits accounts of receipts and expenditure.

15. It supervises the conduct of business by all officials and employes of the Federal administration.

16. It gives an account of its work to the Federal Assembly in each ordinary session, presents to it a report upon the internal condition and foreign relations of the Confederation, and recommends for consideration such measures as it thinks useful for promoting the general welfare.

It makes special reports whenever the Federal Assembly or either division thereof so demands.

ARTICLE 103.—The business of the Federal Council is distributed among its members by departments. All decisions emanate from the Federal Council as a single authority.

Federal legislation may authorise departments, or services in connection therewith, themselves to control certain affairs, subject to a right of appeal.

The cases in which such appeal may be made to a Federal Administrative Court shall be determined by Federal legislation.

ARTICLE 104.—The Federal Council and its departments are authorised to call in experts for special purposes.

### III.—THE FEDERAL CHANCELLERY.

ARTICLE 105.—The Federal Chancellery, under the Chancellor of the Confederation, acts as the Secretariat of the Federal Assembly and the Federal Council.

The Chancellor is elected for three years by the Federal Assembly and holds office concurrently with it.

The Chancellery is under the special supervision of the Federal Council.

The organization of the Chancellery is determined by Federal legislation.

### IV.—THE FEDERAL TRIBUNAL.

ARTICLE 106.—A Federal Tribunal is established for the administration of justice in Federal matters.

In penal cases trial is by jury.

ARTICLE 107.—Judges of the Federal Tribunal and their substitutes are appointed by the Federal Assembly, who shall have regard to the representation of the three national languages. The organisation of the Court, its divisions, number of judges, and substitutes, their term of office and emoluments, are determined by law.

ARTICLE 108.—Any citizen eligible for the National Council may be appointed to the Federal Tribunal, but members of the Federal Council or of the Federal Assembly, or officials appointed by them, cannot simultaneously be members of the Federal Tribunal. Judges of this Court may not, during their term of office, occupy any other position, either in the service of the Confederation or in that of a Canton, nor follow any other calling or profession.

ARTICLE 109.—The organization of the secretariat of the Tribunal and the appointment of the staff thereof are in the hands of the Federal Tribunal.

ARTICLE 110.—The judicial power of the Federal Tribunal extends to civil cases—

1. between the Confederation and the Cantons;
2. between the Confederation of the one part, and corporations or individuals of the other part, when the latter are plaintiffs and the matter in dispute reaches the degree of importance to be prescribed by Federal legislation;
3. between Cantons;
4. between Cantons of the one part, and corporations or individuals of the other part, where either party so demands and the matter in dispute reaches the degree of importance to be prescribed by Federal legislation.

The Federal Tribunal also has jurisdiction in regard to loss of nationality. ("Heimathlosigkeit") and disputes between Cantons concerning the right of citizenship of a commune.

ARTICLE 111.—The Federal Court is bound to judge other cases when the parties lodge security and the matter in dispute is of the degree of importance to be prescribed by Federal legislation.

ARTICLE 112.—The Federal Tribunal, with the assistance of a jury to try the facts, has penal jurisdiction as to—

1. cases of high treason against the Confederation and of revolt and violence against the Federal authorities;
2. crimes and offences against the Law of Nations;
3. crimes and political offences which are the cause of, or are consequent upon, disorders necessitating the intervention of the Federal army;
4. charges against officials appointed by a federal

authority when brought before the Tribunal by that authority.

ARTICLE 113.—The Federal Tribunal also has jurisdiction in regard to—

1. conflicts of jurisdiction between Federal authorities of the one part and Cantonal authorities of the other part ;
2. dispute between Cantons in matters of public law ;
3. complaints of violation of the constitutional rights of citizens and complaints by individuals of violation of concordats and treaties.

Administrative disputes are excluded from the jurisdiction, subject to the provisions of Federal legislation.

In all the cases above mentioned, the Federal Tribunal shall administer the laws passed by the Federal Assembly and such decrees of that Assembly as are of general application. It shall likewise act in accordance with treaties ratified by the Federal Assembly.

ARTICLE 114.—In addition to the matters mentioned in Articles 110, 112 and 113, other matters may be placed by Federal legislation under the jurisdiction of the Federal Tribunal in particular, powers may be conferred on the Tribunal for the purpose of ensuring the uniform application of the provisions of Article 64.

#### IV. A.—FEDERAL ADMINISTRATIVE DISCIPLINARY JURISDICTION.

ARTICLE 114a.—The Federal Administrative Court has jurisdiction in regard to administrative disputes in Federal matters referred to it by Federal legislation.

It also has jurisdiction in disciplinary cases in Federal administration referred to it by Federal legislation, in so far as such cases are not reserved to a special jurisdiction.

The Administrative Court shall administer the Federal laws and treaties approved by the Federal Assembly.

Subject to the approval of the Federal Assembly, the

Cantons have the right to give the Federal Administrative Court jurisdiction in administrative cases in Cantonal affairs.

The organization and procedure of the Federal Administrative and Disciplinary Judiciary are regulated by law.

#### V.—MISCELLANEOUS PROVISIONS.

ARTICLE 115.—The seat of government of the Confederation and all matters in relation thereto shall be determined by Federal legislation.

ARTICLE 116.—The three principal languages spoken in Switzerland, German, French and Italian, are the national languages of the Confederation.

ARTICLE 117.—Officials of the Confederation are held responsible for their conduct in office. Their responsibility shall be determined by Federal legislation.

### CHAPTER III.

#### REVISION OF THE FEDERAL CONSTITUTION.

ARTICLE 118.—The Federal Constitution may at any time be wholly or partially amended.

ARTICLE 119.—A total revision is effected through the forms required for passing Federal laws.

ARTICLE 120.—When either division of the Federal Assembly passes a resolution for the total revision of the Constitution, and the other division does not agree, or when 50,000 Swiss voters demand a total revision, the question whether the Constitution ought to be revised is in either case submitted to the people, who vote Yes or No.

If in either case a majority of the Swiss citizens who vote pronounce in the affirmative, there shall be a new election of both Councils for the purpose of undertaking the revision.

ARTICLE 121.—A partial revision may take place by means of the popular initiative, or through the forms prescribed for passing Federal laws.

The popular initiative consists in a demand by 50,000 Swiss voters for the addition of a new Article to the Constitution, or for the repeal or modification of certain Articles of the Constitution already in force.

If by means of the popular initiative several different provisions are presented for revision or for addition to the Federal Constitution, each must form the subject of a separate initiative demand. The initiative demand may take the form of a proposal in general terms or of a Bill complete in all details.

When a demand is couched in general terms the Federal Assembly, if it approve thereof, will proceed to undertake the partial revision in the sense indicated in the demand, and will submit it for adoption or rejection by the people and the Cantons. If, on the contrary, it does not approve, the question whether there shall be a partial revision or not must be submitted to the vote of the people; if a majority of the Swiss citizens taking part in the vote pronounce in the affirmative, the Federal Assembly will proceed to undertake the revision in conformity with the decision of the people.

When a demand is presented in the form of a Bill complete in all details, and the Federal Assembly approves thereof, the Bill shall be submitted for adoption or rejection by the people and the Cantons. If the Federal Assembly does not approve, it may frame a Bill of its own or recommend to the people the rejection of the Bill proposed and submit to the people its own Bill or proposal for rejection at the same time as the Bill presented by popular initiative.

ARTICLE 122.—Federal legislation shall determine the formalities to be observed in regard to popular initiative demands and to voting concerning the revision of the Federal Constitution.

ARTICLE 123.—The revised Federal Constitution, or

the revised part thereof, shall come into force when it has been accepted by a majority of the Swiss citizens taking part in the voting thereon and by a majority of the States.

In reckoning a majority of the States the vote of a Canton is counted as half a vote. The result of the popular vote in each Canton is to be regarded as the vote of the State.

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# **APPENDIX C.**

**Extracts from the German Constitution, 1919.**

## **PART I.**

### **ORGANISATION AND FUNCTIONS OF THE REICH.**

#### **SECTION I.—THE REICH AND THE STATES.**

**ARTICLE 1.**—The German Reich is a Republic.

All state authority emanates from the people.

**ARTICLE 2.**—The territory of the Reich consists of the territories of the German States. Other territories may, by a law of the Reich, be incorporated in the Reich if their population so desires in virtue of the right of self-determination.

**ARTICLE 3.**—The colours of the Reich are black, red and gold. The commercial flag is black, white and red, with the colours of the Reich in the upper inside corner.

**ARTICLE 4.**—The generally recognised rules of International Law are valid as binding constituent parts of the Law of the German Reich.

**ARTICLE 5.**—State authority is exercised in the affairs of the Reich through the institutions of the Reich on the basis of the Constitution of the Reich and in State affairs by the institutions of the States on the basis of the Constitutions of the States.

**ARTICLE 6.**—The Reich has exclusive legislative power as regards:—

- 1.—Foreign relations;
- 2.—Colonial affairs;
- 3.—Nationality, freedom of domicile, immigration and emigration, and extradition;

- 4.—Military organisation;
- 5.—The monetary system ;
- 6.—Customs, as well as uniformity in the sphere of customs and trade, and freedom of commercial intercourse;
- 7.—Posts and telegraphs, including telephones.

ARTICLE 7.—The Reich has legislative power as regards:—

- 1.—Civic rights;
- 2.—Penal law ;
- 3.—Judicial procedure, including the carrying out of sentences, as well as official co-operation between public authorities;
- 4.—Passports and the police supervision of foreigners ;
- 5.—Poor-relief and vagrancy ;
- 6.—The Press, associations and assemblies ;
- 7.—Population questions and the care of motherhood, infants, children and young persons ;
- 8.—Public health and veterinary matters, and the protection of plants against disease and pests;
- 9.—Labour laws, the insurance and protection of workers and employees, together with Labour Bureaux ;
- 10.—The institution of vocational representative bodies for the territory of the Reich ;
- 11.—The care of persons who took part in the war, and of their dependants;
- 12.—The law of expropriation ;
- 13.—The formation of associations for dealing with natural resources and economic undertakings, as well as the production, preparation, distribution and determination of prices of economic commodities for common use ;
- 14.—Commerce, the system of weights and measures, the issue of paper money, banking affairs and the system of exchange ;
- 15.—Traffic in foodstuffs and luxuries, as well as in articles of daily necessity;

16.—Industry and mining;

17.—Insurance matters;

18.—Navigation, deep sea and coastal fishery;

19.—Railways, inland navigation, motor traffic by land, water and air, as well as the construction of high-roads, so far as this is concerned with general traffic and home defence;

20.—Theatres and cinemas.

ARTICLE 8.—Further, the Reich has legislative power as regards taxes and other revenues in so far as they are appropriated wholly or in part to its purposes. Should the Reich appropriate taxes or other revenues hitherto appertaining to the various States, it must take into consideration the maintenance of the vitality of those States.

ARTICLE 9.—Where there is need for the issue of uniform regulations, the Reich has legislative power as regards:—

1.—Sanitary administration;

2.—The maintenance of public order and security.

ARTICLE 10.—The Reich may by legislation lay down fundamental principles governing:—

1.—The rights and duties of religious associations;

2.—Education, including higher education and scientific literature;

3.—The law as to the conditions of service of officials of all public bodies;

4.—The land laws, the distribution of land, land settlement and small holdings, the tenure of landed property;

5.—Burial of the dead.

ARTICLE 11.—The Reich may by legislation lay down fundamental principles governing the admissibility and mode of collection of State taxes, in so far as they are requisite either for the purpose of preventing:—

1.—Loss of revenue or injury to the commercial relations of the Reich;

2.—Double taxation ;

3.—Charges for the use of public means of communication and their accessories, which are excessive and constitute a hindrance to traffic ;

4.—Assessments which are prejudicial to imported goods, as opposed to home products, in dealings between the separate States and parts of a State, or

5.—Bounties on exportation ;  
or for the purpose of protecting important social interests.

ARTICLE 12.—So long and in so far as the Reich does not make use of its legislative power, the States retain that power for themselves. This does not apply to the exclusive legislative power of the Reich.

The Government of the Reich has the right of veto in respect of any laws of a State which refer to subjects included in Article 7, Number 13, in so far as the welfare of the Reich as a whole is thereby affected.

ARTICLE 13.—The law of the Reich overrides the law of a State.

Where there exists any doubt or difference of opinion as to whether any provision of state law is compatible with the law of the Reich, an appeal may be made by the competent Reich or State authorities to the decision of the Supreme Court of the Reich in accordance with the more detailed provisions to be prescribed by a law of the Reich.

ARTICLE 14.—Laws of the Reich are carried into execution by the State authorities, unless these laws decree otherwise.

ARTICLE 15.—The Government of the Reich exercises control in those affairs in which the Reich has legislative power.

In so far as laws of the Reich are carried into execution by State authorities, the Government of the Reich may issue general instructions. For the purpose of supervision of the execution of laws of the Reich, the Government is empowered

to despatch commissioners to the State central authorities, and, with their consent, to the subordinate authorities.

It is the duty of the State Governments, at the request of the Government of the Reich, to remedy defects observed in the execution of laws of the Reich. In case of differences of opinion, both the Government of the Reich and the State Government may appeal to the decision of the Supreme Court, save where appeal to another Court has been prescribed by law of the Reich.

**ARTICLE 16.**—Officials entrusted with the direct administration of the Reich in the various States shall as a rule be citizens of the State in question. Officials, employees and workmen of the administration of the Reich shall, if they desire it, be employed as far as possible in their native districts, unless considerations of training or the exigencies of the service are opposed to this course.

**ARTICLE 17.**—Each State must have a republican constitution. The representatives of the people must be elected by the universal equal, direct and secret suffrage of all men and women of the German Reich, upon the principles of proportional representation. The State Government must enjoy the confidence of the people's representatives.

The principles governing elections of the people's representatives apply also to elections to local bodies. By a State law the qualification for a vote may, however, be declared conditional upon a year's residence in the district.

**ARTICLE 18.**—The organisation of the Reich into States shall serve the highest economic and cultural interests of the people with all due consideration for the will of the population concerned. Alteration of the territory of the States, and the formation of new States within the Reich shall be effected by means of a law of the Reich amending the Constitution.

Where the States concerned give their direct consent, a simple law of the Reich suffices.

A simple law of the Reich suffices also, in a case where the consent of one of the States concerned has not been obtained, but where an alteration of territory or reorganisation is demanded by the will of the population and required by paramount interests of the Reich.

The will of the population is ascertained by plebiscite. The Government of the Reich orders the taking of a plebiscite when demanded by one-third of those inhabitants of the territory to be separated who are entitled to vote for the Reichstag.

For the determination of an alteration or reorganisation of territory, the proportion of votes required is three-fifths the number cast, or at least, a majority of the votes of persons qualified. Even when it is a question only of the separation of a portion of a Prussian administrative area (*Regierungsbezirk*), a Bavarian district (*Kreis*) or of a corresponding administrative district (*Verwaltungsbezirk*) in other States, the will of the population of the whole district in question shall be ascertained. Should the area of the territory to be separated and that of the whole district (*Bezirk*) not coincide, the will of the population of the former may by means of a special law of the Reich be declared sufficient.

The consent of the population having been obtained, the Government of the Reich shall lay before the Reichstag a law in accordance with the decision.

In the case of union or separation, should any dispute arise on the question of arrangements as to property, the decision on such points shall be given, upon an application from one party, by the Supreme Court of the German Reich.

ARTICLE 19.—Constitutional controversies within a State in which no court exists for their settlement, and disputes, not of a private nature, between different States or between the Reich and a State, are decided, upon an

application from one of the parties, by the Supreme Court of the German Reich unless another Court of the Reich is competent.

The President of the Reich carries out the decision of the Supreme Court.

## SECTION VI.

### ADMINISTRATION OF THE REICH.

ARTICLE 78.—The conduct of foreign affairs is the exclusive concern of the Reich.

In affairs regulated by State legislation, the States may conclude agreement with foreign States. These agreements require the consent of the Reich.

Conventions with foreign States as to the alteration of the frontiers of the Reich are concluded by the Reich, with the consent of the State concerned. Alterations in the frontier may be effected only by a law of the Reich, except in the case of a simple rectification of the borders of uninhabited portions of a district.

In order to guarantee representation of the interests of individual States arising from their special economic relations with foreign States or their proximity thereto, the Reich undertakes the requisite arrangements and measures in agreement with the State concerned.

ARTICLE 79.—The defence of the Reich is a matter for action by the Reich. The military organisation of the German people is regulated uniformly by means of a law of the Reich, regard being had to the individual conditions of each State.

ARTICLE 80.—Colonial affairs are exclusively the business of the Reich.

ARTICLE 81.—All German merchant shipping constitutes a united commercial fleet.

ARTICLE 82.—Germany forms one customs and commercial district, enclosed by one common customs frontier.

The customs frontier coincides with the foreign frontier. To seaward it is formed by the shore of the mainland, with the islands belonging to the territory of the Reich. On the sea or on other bodies of the water, deviations may be made in the course of the Customs frontier.

The territories or portions of the territories of a foreign State may be included in the Customs district by State treaties or by agreement.

In cases of special necessity certain areas may be excluded from the Customs district. In the case of free ports, exclusion can be set aside only by means of a law amending the Constitution.

Places excluded from the Customs district may join a foreign customs district by means of a State treaty or by agreement.

All natural products as well as products of manufacture and industry in which there is free trade within the Reich, may be imported, exported or sent in through transit across the frontiers of the States and local authorities. Exceptions may be allowed by a law of the Reich.

ARTICLE 83.—Customs and duties upon articles of consumption are administered by authorities of the Reich.

In the administration of taxes by the authorities of the Reich arrangements shall be made so as to ensure to the various States the protection of special State interests within the domain of agriculture, trade, manufacture and industry.

ARTICLE 84.—The Government of the Reich regulates by law:—

- 1.—The organisation of the administration of taxes in the States, so far as is required for the purpose of uniform and equal execution of the laws of the Reich on taxation;

- 2.—The organisation and powers of the authorities entrusted with the superintendence of the execution of the laws of the Reich on taxation.

- 3.—The settlement of accounts with the States;



4.—The reimbursement of expenses of administration in the execution of the laws of the Reich on taxation.

ARTICLE 85.—All receipts and expenditures of the Reich must be estimated for each financial year and be shown in the Budget.

The Budget must be passed into law before the opening of the financial year.

Items of expenditure shall normally be granted for one year; in special cases, they may be granted for a longer period. In general, provisions in the Budget law of the Reich, which extend beyond the financial year or do not refer to the receipts and expenditure of the Reich or their administration, are inadmissible.

The Reichstag may neither increase items of expenditure, nor include new ones, in the draft of the Budget, without the consent of the Reichsrat.

Failing the consent of the Reichsrat the provisions of Article 74 apply.

ARTICLE 86.—In order to secure discharge of the responsibility of the Government of the Reich, the Minister of Finance for the Reich shall, in the following financial year, submit to the Reichstag and the Reichsrat an account of the expenditure out of all revenues of the Reich. The auditing of accounts shall be regulated by law of the Reich.

ARTICLE 87.—Funds may be obtained by way of loan in case of special necessity, and, as a rule, only for expenditure on productive undertakings. Such a proceeding, as well as the giving of a security on behalf of the Reich, may be effected only upon the authority of law of the Reich.

ARTICLE 88.—The postal and telegraph services, together with the telephone services, are exclusively the affairs of the Reich.

Postage stamps are uniform for the whole Reich.

The Government of the Reich, with the consent of the

Reichsrat, issues the instructions which determine the conditions and charges for the use of the means of communication. With the consent of the Reichsrat, the Government may transfer these powers to the Minister of Posts.

For the purpose of consultative co-operation in matters connected with postal, telegraphic and telephonic communications and the charges therefor, the Government of the Reich shall, with the consent of the Reichsrat, establish an Advisory Council.

Treaties referring to means of communication with foreign countries are concluded only by the Government of the Reich.

ARTICLE 89.—It is the duty of the Government of the Reich to assume ownership of the railways serving for general traffic, and to manage them on a uniform traffic system.

The Rights of States to acquire private railways shall be transferred, upon demand, to the Government of the Reich.

ARTICLE 90.—With the transfer of the railways, the Reich assumes the power of expropriation and the sovereign rights of the States as regards the railway service. The Supreme Court decides, in case of dispute, as to the extent of such rights.

ARTICLE 91.—The Government of the Reich, with the consent of the Reichsrat, issues orders for regulating the construction, management and working of the railways. With the consent of the Reichsrat, the Government may delegate these powers to the competent Minister of the Reich.

ARTICLE 92.—Notwithstanding the incorporation of their budget and accounts with the general Budget and accounts of the Reich the railways of the Reich shall be administered as an independent, economic undertaking responsible for defraying its own expenses, inclusive of

interest and a sinking-fund for the railway debt, and also for accumulating a reserve. The amount of the sinking-fund and reserve, as well as the purposes to which the reserve is to be applied, shall be regulated by means of a special law.

ARTICLE 93.—For the purpose of consultative co-operation in matters concerning railway traffic and rates, the Government of the Reich shall, with the consent of the Reichsrat, establish Advisory Councils for the Railways of the Reich.

ARTICLE 94.—Where the Government of the Reich has taken over in a certain district the railways serving for general traffic, new railways serving the same purpose may be constructed within this district only by the Reich, or with its consent. Should the construction of new or the alteration of existing railways by the Reich affect the sphere of activity of the police authorities of a State, the Railway Administration of the Reich must consult the State Authorities before coming to a decision.

Where the Reich has not yet taken over the railways, it may, on the authority of a law of the Reich, construct at its own expense, or permit another body to construct (subject when necessary to reservation of the right of expropriation), railways considered necessary for general traffic or for the defence of the territory, even without the consent of the States through the territory of which the railway is to run, but without prejudice to the sovereign rights of the States.

Every railway system must permit other railways to make junctions with it at the cost of the latter.

ARTICLE 95.—Railways for general traffic which are not under the administration of the Reich are subject to its supervision.

Railways subject to such supervision shall be constructed and equipped upon the principles laid down by the

Reich. They must be maintained in good working order, and developed in accordance with the requirements of traffic. Both passenger and goods traffic must be attended to and organised in accordance with their needs.

In the supervision of rates, uniform and low railway rates are to be aimed at.

ARTICLE 96.—All railways, including those not serving for general traffic, must comply with the requirements of the Reich as to the use of railways for the purpose of State defence.

ARTICLE 97.—It is the duty of the Reich to acquire and administer waterways serving for general traffic.

After this transfer, waterways serving for general traffic may be constructed or extended only by or with the consent of the Reich.

In the administration, extension or construction of waterways, the requirements of agriculture and the water supply must be safeguarded, in agreement with the States. Their improvement must also be taken into consideration.

Every waterways administration must permit junctions with its system to be made by other inland waterways, at the expense of the latter. The same obligation extends to the establishment of a connection between inland waterways and railways.

With the transfer of the waterways, the Reich assumes authority as to expropriation, and the fixing of rates, as well as the control of river and shipping police.

The business of the River Development Associations in relation to the development of natural waterways in the Rhine, Weser and Elbe districts is to be taken over by the Reich.

ARTICLE 98.—For the purpose of co-operation in matters concerning waterways, Advisory Councils shall be established with the consent of the Reichsrat, in accordance with detailed regulations by the Government of the Reich.

ARTICLE 99.—In connection with natural waterways, dues may be levied only in respect of such works, appliances and other installations as are intended for the facilitation of traffic.

Expenses of the establishment and maintenance of installations not intended exclusively for the facilitation of traffic, but intended also for other purposes may be defrayed only up to a proportionate amount by means of dues on navigation. Interest and sinking-fund on the capital expended shall be reckoned as expenses of establishment.

The provisions of the previous paragraph apply to dues levied for artificial waterways, as well as to installations in connection therewith and in the ports.

In the sphere of inland navigation, the basis for the assessment of navigation dues may be the total expenses of a waterway, a river district, or a system of waterways.

These provisions apply also in respect of timber rafts upon navigable waterways.

The imposition of taxes upon foreign ships and their cargoes, different from or higher than those levied upon German ships and cargoes, is a question for the Reich alone.

The Reich may, by means of a law, require contributions in other ways from parties concerned in navigation, for the provision of funds for the maintenance and development of the German system of waterways.

ARTICLE 100.—For the purpose of the meeting the expenses of maintenance and development of inland waterways, a law of the Reich may provide for contributions from those who profit in any other way than by navigation in the construction of dams, in cases where several States have shared in, or where the Reich alone has borne the expenses of construction.

ARTICLE 101.—It is the duty of the Reich to assume ownership and administration of all navigation marks,

particularly light-houses, light-ships, buoys, barrels and beacons. After such transfer, marks may be constructed and extended only by, or with the consent of the Reich.

## SECTION VII.

### ADMINISTRATION OF JUSTICE.

ARTICLE 102.—Judges are independent and subject only to the law.

ARTICLE 103.—The ordinary jurisdiction is exercised by the High Court of the Reich and the Courts of the States.

ARTICLE 104.—The judges of the ordinary Courts are appointed for life. They may be removed from office, permanently or temporarily transferred to another position or retired only on the authority of the judicial decision, and only upon the grounds and by the methods of procedure fixed by law. Age limits may be fixed by legislation, upon reaching which judges shall retire.

Provisional removal from office when authorised by law is not affected by the above.

In the case of a re-arrangement of the Courts of their circuits, the State Administration of Justice may order compulsory transfer to another court, or removal from office, but only on condition of the retention of full salary.

These provisions do not apply to commercial judges, assessors and jurymen.

ARTICLE 105.—Extraordinary Courts are prohibited. No one may be withdrawn from his legal judge. Legal regulations regarding Courts-Martial and Summary Military Courts are not affected by the above. Military Courts of Honour are abolished.

ARTICLE 106.—Military jurisdiction is abolished, except in time of war and on board warships. Details are regulated by a law of the Reich.

ARTICLE 107.—In the Reich and the States administra-

tive courts shall be established by law for the protection of individuals against regulations and decrees of the administrative authorities.

ARTICLE 108.—A Supreme Court for the German Reich shall be established by law of the Reich.

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## **PART II.**

### **SECTION III.**

#### **RELIGION AND RELIGIOUS ASSOCIATIONS.**

ARTICLE 135.—All inhabitants of the Reich enjoy full liberty of faith and of conscience. The undisturbed practice of religion is guaranteed by the Constitution and is under State protection. The general laws of the State shall remain unaffected hereby.

ARTICLE 136.—Civil and political rights and duties are neither dependent upon nor restricted by the practice of religious freedom.

The enjoyment of civil and political rights, as well as admission to official posts, are independent of religious creed.

No one is bound to disclose his religious convictions. The authorities have the right to make enquiries as to membership of a religious body only when rights and duties depend upon it or when the collection of statistics ordered by law requires it.

No one may be compelled to take part in any ecclesiastical act or ceremony, or to participate in religious practices or to make use of any religious form of oath.

ARTICLE 137.—There is no State Church.

Freedom of association is guaranteed to religious bodies. The union of religious bodies within the territory of the Reich is subject to no restriction.

Every religious body regulates and administers its affairs independently, within the limits of the laws applica-

ble to all. It appoints its officers without the co-operation of the State or of the local authorities.

Religious bodies acquire legal status in accordance with the general regulations of the civil code.

Religious bodies remain legal corporations in so far as they have been so up to the present. Equal rights shall be granted to other religious bodies upon application, if their constitution and the number of their members offer a guarantee of permanence. Where several such religious bodies which are legal corporations combine to form one union, this union becomes a legal corporation.

Religious bodies which are legal corporations are entitled to levy taxes on the basis of the civic tax-rolls, in accordance with the provisions of the laws of the States.

Associations devoting themselves to the common promotion of a world-philosophy shall be placed upon an equal footing with religious bodies.

So far as further regulations may be necessary for the carrying out of these provisions they shall be prescribed by legislation of the States.

ARTICLE 138.—Outstanding State liabilities to religious bodies, whether founded upon legislation, contract or exceptional legal title, shall be redeemed by legislation by the States. The governing principles of such legislation shall be prescribed by the Reich.

The property and other rights of religious bodies and unions in respect of their institutions, foundations and other property devoted to public worship, education and social welfare, are guaranteed.

ARTICLE 139.—Sundays and holidays recognised by the State shall remain under legal protection as days of rest and spiritual improvement.

ARTICLE 140.—The members of the armed forces are guaranteed the necessary free time for the performance of their religious duties.



ARTICLE 141.—Religious bodies have the right of entry for religious purposes into the army, hospitals, prisons, or other public institutions, so far as is necessary for the conduct of public worship and religious ministrations, but any form of compulsion is forbidden.

#### SECTION V.

##### ECONOMIC LIFE.

ARTICLE 151.—The organisation of economic life must correspond to the principles of justice, and be designed to ensure for all a life worthy of a human being. Within these limits the economic freedom of the individual must be guaranteed.

Legal compulsion is permissible only in order to enforce rights which are threatened, or to subserve the pre-eminent claims of the common weal.

Freedom of trade and industry is guaranteed in accordance with the provisions of laws of the Reich.

ARTICLE 152.—Freedom of contract shall prevail in economic relations, subject to the provisions of the laws.

Usury is forbidden. Contracts which are opposed to morality are void.

ARTICLE 153.—Property is guaranteed by the Constitution. Its extent and the restrictions placed upon it are defined by law.

Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation, save in so far as may be otherwise provided by a law of the Reich. In case of dispute as to the amount of compensation, resort may be had to legal proceedings in the ordinary course, unless a law of the Reich otherwise determines. Property of the States, local authorities and public utility associations may be expropriated by the Reich only on payment of compensation.

The ownership of property entails obligations. Its use must at the same time serve the common good.

ARTICLE 154.—The right of inheritance is guaranteed in accordance with the provisions of the Civil Law.

The share in any inheritance which accrues to the State is determined by law.

ARTICLE 155.—The distribution and use of land shall be supervised by the State in such a way as to prevent abuse and with a view to ensuring to every German a healthy dwelling and to all German families, particularly those with many children, a dwelling and economic homestead suited to their needs. Special consideration shall be given in the framing of the Homestead Laws to persons who have taken part in the war.

Landed property may be expropriated when required to meet the needs of housing, or for the purpose of land settlement, the bringing of land into cultivation or the improvement of husbandry. Testamentary trusts are to be terminated.

The cultivation and full utilization of the land is a duty the landowner owes to the community. Increment in the value of landed property, not accruing from any expenditure of labour and capital upon the land, shall be devoted to the uses of the community.

All riches in the soil and all natural sources of power of economic value shall be under the control of the State. Private royalties shall be transferred to the State by legislation.

ARTICLE 156.—The Reich may, by legislation, without prejudice to the payment of compensation and subject to appropriate application of the provisions governing expropriation, transfer to public ownership private economic undertakings which are suitable for socialization. It may itself undertake, or assign to the States or local authorities a share in, the management of such undertakings and

associations, or otherwise ensure to itself a determining influence therein.

Further, the Reich may by legislation, in case of pressing necessity and in the economic interests of the community, oblige economic undertakings and associations to combine, on a self-governing basis, for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management, and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interest of the community.

Industrial and agricultural co-operative societies and federations thereof may be incorporated into the public economic system, at their own request and with due regard to their constitution and special characteristics.

ARTICLE 157.—Labour is under the special protection of the Reich.

The Reich will frame a uniform labour code.

ARTICLE 158.—Intellectual work, the rights of discoverers, inventors and artists are under the protection and care of the Reich.

By means of international agreements, recognition and protection must be ensured abroad for the products of German science, art, and technical skill.

ARTICLE 159.—Freedom of association for the maintenance and improvement of labour and economic conditions is guaranteed to everyone and for all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal.

ARTICLE 160.—Every person in the position of an employee or workman has a right to such free time as is necessary for the exercise of his civic rights, and, in so far as the business in which he is employed will not be seriously injured thereby, for the discharge of honorary public duties

entrusted to him. Legislation shall determine how far such a person may be entitled to claim compensation.

ARTICLE 161.—The Reich will, with the full co-operation of insured persons, create a comprehensive system of insurance for the maintenance of health and fitness for work, the protection of motherhood and provision for the economic consequences of old age, infirmity and the vicissitudes of life.

ARTICLE 162.—The Reich will initiate international regulation of the legal conditions of workers, with a view to securing for the working class of the world a universal minimum of social rights.

ARTICLE 163.—It is the moral duty of every German, without prejudice to his personal liberty, to make such use of his mental and bodily powers as shall be necessary for the welfare of the community.

Every German must be afforded an opportunity to gain his livelihood by economic labour. Where no suitable opportunity of work can be found for him, provision shall be made for his support. Details shall be determined by special laws of the Reich.

ARTICLE 164.—The independent middle class in agriculture, industry and commerce, shall be encouraged by legislative and administrative measures, and shall be protected against exploitation and oppression.

ARTICLE 165.—Workers and salaried employees are called upon to co-operate with equal rights in common with the employers in the regulation of wages and conditions of labour and in the general economic development of the forces of production. The organisations on both sides and the agreements made by them shall be recognised.

For the protection of their social and economic interests, workers and salaried employees shall have legal representation in Workers' Councils for individual undertakings and in District Workers' Councils grouped accord-

ing to economic districts and in a Workers' Council of the Reich.

The District Workers' Council and the Workers' Council of the Reich shall combine with representatives of the employers and other classes of the population concerned so as to form District Economic Councils and an Economic Council of the Reich, for the discharge of their joint economic functions and for co-operation in the carrying-out of laws relating to socialization. The District Economic Councils and the Economic Council of the Reich shall be so constituted as ~~to~~ give representation thereon to all important vocational groups in proportion to their economic and social importance.

All Bills of fundamental importance dealing with matters of social and economic legislation shall, before being introduced, be submitted by the Government of the Reich to the Economic Council of the Reich for its opinion thereon. The Economic Council of the Reich shall have the right itself to propose such legislation. Should the Government of the Reich not agree with any such proposal, it must nevertheless introduce it in the Reichstag, accompanied by a statement of its own views thereon. The Economic Council of the Reich may arrange for one of its own members to advocate the proposal in the Reichstag.

Powers of control and administration in any matters falling within their province may be conferred upon Workers' Councils and Economic Councils.

The constitution and functions of the Workers' and Economic Councils and their relations with other autonomous social organizations are within the exclusive jurisdiction of the Reich.

THE END.

